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REPORTS

FROM

COMMITTEES:

ELEVEN VOLUMES.

—*(4.)*—

COURT OF CHANCERY (IRELAND) BILL;

NAWAB OF SURAT TREATY BILL.

Session

31 *January* —— 29 *July* 1856.

VOL. X.

1856.

REPORTS FROM COMMITTEES:

1856.

ELEVEN VOLUMES:—CONTENTS OF THE

FOURTH VOLUME.

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REPORT

FROM THE

SELECT COMMITTEE

ON

COURT OF CHANCERY (IRELAND) BILLS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

APPENDIX AND INDEX.

Ordered, by The House of Commons, *to be Printed,*
24 *June* 1856.

Lunæ, 18° *die Februarii*, 1856.

Court of Chancery (Ireland) Bill, read 2°.

Ordered, That the said Bill be committed to a Select Committee.

Martis, 26° *die Februarii*, 1856.

Ordered, That such Select Committee do consist of,—

Mr. Solicitor-general for Ireland.	Mr. Macartney.
Sir James Graham.	Mr. Henry Herbert.
Mr. Edward Ellice.	Mr. Seymour Fitzgerald.
Mr. Henley.	Mr. Whiteside.
Mr. Walpole.	Mr. De Vere.
Mr. Keogh.	Sir Erskine Perry.
Viscount Monck.	Mr. Kirk.
Mr. Napier.	

Ordered, That the Committee have power to send for Persons, Papers, and Records.

Ordered, That Five be the quorum of the Committee.

Mercurii, 27° *die Februarii*, 1856.

Ordered, That the Committee do consist of 17 Members.

Ordered, That Sir Fitzroy Kelly and Mr. Solicitor-general be added thereto.

Martis, 26° *die Februarii*, 1856.

Ordered, That the Court of Chancery, Ireland (Jurisdiction), the Court of Chancery, Ireland (Procedure), the Court of Chancery, Ireland (Receivers), the Court of Chancery, Ireland (Appeals), the Court of Chancery, Ireland (Sales of Estates) Bills, be committed to the same Committee.

Sabbati, 1° *die Martii*, 1856.

Ordered, That Mr. Napier be discharged from further attendance on the said Committee, and that Mr. Grogan be added thereto.

Martis, 22° *die Aprilis*, 1856.

Ordered, That Mr. Attorney-general for Ireland be added to the Committee.

Jovis, 24° *die Aprilis*, 1856.

Ordered, That Mr. Deasy be added to the Committee.

Veneris, 20° *die Junii*, 1856.

Leave given to the Select Committee to make a Special Report. Power to report Opinion, together with the Minutes of Evidence.

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REPORT.

MR. ATTORNEY-GENERAL for IRELAND reported from the SELECT COMMITTEE on The Court of Chancery, Ireland, Bill; The Court of Chancery, Ireland, (Jurisdiction) Bill; The Court of Chancery, Ireland, (Procedure) Bill; The Court of Chancery, Ireland, (Receivers) Bill; The Court of Chancery, Ireland, (Appeals) Bill; and The Court of Chancery, Ireland, (Sales of Estates) Bill; who were empowered to send for Persons, Papers, and Records, and to make a Special Report, and to report Opinion, together with the MINUTES of EVIDENCE taken before them, to The House:——THAT they had taken Evidence on the subject of the said Bills, and had agreed to the following Resolutions, which they had directed him to report to The House, together with the MINUTES of EVIDENCE taken before them:—

THAT it is the opinion of this Committee:—

1. That the system of conferring an indefeasible title on judicial sales of encumbered estates in Ireland should be perpetuated.

2. That the benefits flowing from that system should be extended to unencumbered estates.

3. That a tribunal ought to exist in Ireland, having power to confer an indefeasible title on the sale of estates, the titles to which, being submitted to a judicial investigation, should be found satisfactory.

4. That it is essential that the constitution of the Court of Chancery in Ireland should be altered, and its procedure and practice reformed.

5. That the Masters in Ordinary should have original jurisdiction and all the powers of a Court of Equity over all administration suits, foreclosure suits, partnership accounts, and such other matters, under the 15th section of Sir John Romilly's Act, as petitioners should wish to set down, and to be heard by any Master in Ordinary.

6. That the Lord Chancellor, Master of the Rolls, and, subject to such rules as the Chancellor shall make, the Masters in Ordinary should have power to obtain the assistance of valuators, surveyors, accountants, merchants, engineers, actuaries, or other scientific persons, and enable such Court or Judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons.

7. That, subject to the above rules, every Equity Judge should dispose of the whole suit before him, without any reference.

8. That the practice of receiving evidence *vivâ voce* in the Court of Chancery before the Judge who has to decide the cause is a sound one, and that it is desirable that increased facilities should be afforded for a more extensive application of the system.

9. That a Court of Appeal in Chancery should be constituted, to consist of the Lord Chancellor and an additional Judge to be Lord Justice of the Court of Appeal, with power to the Court to call in the aid of a Judge of one of the superior Courts of Common Law.

10. That all appeals from orders or decrees of the Master of the Rolls, and all rehearings of decisions of the Lord Chancellor, should be determined by the Court of Appeal.

11. That the Lord Chancellor, Master of the Rolls, and Judge of the Court of Appeal, or two of them, should be armed with extensive powers to reform and regulate the practice and procedure of the Court, so as to attain economy, simplicity, and expedition, and should be bound to make general orders accordingly.

Receivers.

12. That the law and practice of the Court of Chancery in Ireland, in relation to the appointment of Receivers over real estate, requires to be further amended.

13. That the appointment of Receivers should be discouraged.

14. That, in order to lessen the necessity for the appointment of Receivers, in suits for the sale of land, the sale should take place at the earliest practicable stage of the suit.

15. That the Court should be empowered to refuse the appointment of a Receiver, unless it should be made appear to the Court that the interests and protection of the parties required it.

16. That the Court should be also empowered to refuse a Receiver, where it appeared that the appointment of a Receiver would not be productive of substantial benefit to the parties.

17. That the Act 11 & 12 Geo. 3, c. 10 (Irish), by which Courts of Equity in Ireland are authorised to appoint Receivers for the purpose of discharging arrears or interest on mortgages, should be repealed.

5 & 6 Will. 4, c. 55.
3 & 4 Vict. c. 105.
7 & 8 Vict. c. 90.
12 & 13 Vict. c. 95.
13 & 14 Vict. c. 29.

18. That the several Acts which regulate the right of a judgment creditor in Ireland, against the real estate of his debtor, require to be reconsidered.

19. That this Committee, being of opinion that the system of conferring an indefeasible title on judicial sales of encumbered estates should be continued without intermission, recommends that the Encumbered Estates Court should be continued for a period not exceeding one year.

20. That in lieu of the present appeal from the Encumbered Estates Court to the Privy Council, all future appeals should be to the Court of Appeal in Chancery.

21. That such appeals should be of right.

22. That the place for holding the sittings of the Court should with all convenient speed be changed from its present locality to the Four Courts.

Mr. Attorney-general for Ireland further Reported from the said SELECT COMMITTEE,

THAT having regard to the said Resolutions, the Committee had not considered it expedient to go through the said Bills, which they had directed him to Report to The House.

24 *June* 1856.

PROCEEDINGS OF THE COMMITTEE.

Veneris, 29° die Februarii, 1856.

MEMBERS PRESENT:

Mr. Seymour Fitzgerald.	Sir Erskine Perry.
Mr. Ellice.	Mr. Kirk.
Mr. Solicitor-General for Ireland.	Mr. Walpole.
Mr. Whiteside.	Viscount Monck.
Mr. De Vere.	

Mr. *Solicitor-General for Ireland* was called to the Chair.

The Committee considered course of proceeding.

Resolved, That the Committee will proceed to hear evidence,—

1st. Whether it will be expedient to transfer the existing business of the Encumbered Estates Court to the Court of Chancery.

2d. Whether it be advisable to continue the Encumbered Estates with a concurrent jurisdiction for a limited period.

3d. In either case, what, if any, will be the necessary addition, and whether the staff proposed by the Bill of the Solicitor-General will be requisite or sufficient to discharge the business proposed to be committed to it.

[Adjourned till Two o'clock on Monday.

Lunæ, 3° die Martii, 1856.

MEMBERS PRESENT:

Mr. Solicitor General for Ireland in the Chair.

Sir Erskine Perry.	Mr. Henley.
Mr. De Vere.	Mr. Seymour Fitzgerald.
Mr. Ellice.	Sir James Graham.
Mr. Whiteside.	Viscount Monck.
Mr. Walpole.	Mr. Grogan.
Mr. Macartney.	

The Committee further considered future course of proceeding.

[Adjourned till One o'clock on Thursday.

Jovis, 6° die Martii, 1856.

MEMBERS PRESENT:

Mr. Solicitor-General for Ireland in the Chair.

Sir James Graham.	Mr. Henry Herbert.
Mr. Henley.	Mr. Whiteside.
Mr. Seymour Fitzgerald.	Mr. De Vere.
Sir Erskine Perry.	Viscount Monck.
Mr. Grogan.	Mr. Ellice.

Mr. *Charles James Hargreave* examined.

[Adjourned till One o'clock on Monday.

Lunæ, 10° *die Martii*, 1856.

MEMBERS PRESENT:

Mr. SOLICITOR-GENERAL for Ireland in the Chair.

Sir James Graham.	Mr. Ellice.
Mr. Kirk.	Mr. Walpole.
Mr. De Vere.	Mr. Seymour Fitzgerald.
Sir Erskine Perry.	Mr. Grogan.
Mr. Whiteside.	Viscount Monck.

Mr. *Charles James Hargreave* and The Right Hon. Sir *John Romilly*, Master of the Rolls, examined.

[Adjourned till Thursday, at One o'clock.

Jovis, 13° *die Martii*, 1856.

MEMBERS PRESENT:

Mr. SOLICITOR-GENERAL for Ireland in the Chair.

Mr. Grogan.	Mr. Kirk.
Sir James Graham.	Mr. Henry Herbert.
Mr. Seymour Fitzgerald.	Mr. Ellice.
Mr. Henley.	Viscount Monck.
Sir Erskine Perry.	Sir Fitzroy Kelly.

Mr. *Charles James Hargreave* examined.

Committee deliberated.

[Adjourned till One o'clock on Thursday, the 3d of April.

Jovis, 3° *die Aprilis*, 1856.

MEMBERS PRESENT:

Sir JAMES GRAHAM called to the Chair.

Viscount Monck.	Mr. Grogan.
Mr. Henry Herbert.	Mr. Macartney.
Mr. Seymour Fitzgerald.	Mr. Henley.
Mr. De Vere.	Mr. Ellice.
Sir Erskine Perry.	

The Right Hon. the Master of the Rolls for Ireland examined.

Committee deliberated.

[Adjourned till 17th instant, at One o'clock.

Jovis, 17° *die Aprilis*, 1856.

MEMBERS PRESENT:

Sir JAMES GRAHAM in the Chair.

Sir Erskine Perry.	Mr. Grogan.
Viscount Monck.	Mr. Henry Herbert.
Mr. Ellice.	Mr. De Vere.
Mr. Henley.	Mr. Whiteside.
Mr. Kirk.	Mr. Seymour Fitzgerald.

Mr. *William Williams* and Mr. *Montiford Longfield*, L.L.D., examined.

[Adjourned till One o'clock on Monday.

Lunæ, 21° *die Aprilis*, 1856

MEMBERS PRESENT:

Sir JAMES GRAHAM in the Chair.

Viscount Monck.	Mr. Macartney.
Sir Erskine Perry.	Mr. Seymour Fitzgerald.
Mr. Grogan.	Mr. Whiteside.
Mr. Henley.	Mr. Ellice.
Mr. De Vere.	Mr. Walpole.
Mr. Kirk.	

Room cleared: Committee deliberated.

Parties called in.

Mr. *Montiford Longfield*, L.L.D., examined.

[Adjourned till One o'clock on Thursday.

Jovis, 24° *die Aprilis*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Sir J. Graham.	Mr. Grogan.
Mr. Edward Ellice.	Viscount Monck.
Mr. Whiteside.	Mr. Henley.
Mr. Henry Herbert.	Mr. Kirk.
Mr. Macartney.	Mr. De Vere.
Sir E. Perry.	

Master *Jeremiah John Murphy* examined.

[Adjourned to Monday, at One o'clock.

Lunæ, 28° *die Aprilis*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Sir J. Graham.	Mr. Ellice.
Viscount Monck.	Mr. Herbert.
Mr. Macartney.	Mr. Kirk.
Mr. Grogan.	Mr. De Vere.
Sir E. Perry.	Mr. Fitzgerald.

Mr. *William Gibson* examined.

[Adjourned to Thursday, at One o'clock.

Jovis, 1° *die Maii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Kirk.	Mr. De Vere.
Viscount Monck.	Mr. E. Ellice.
Sir E. Perry.	Mr. Henley.
Mr. Grogan.	Sir J. Graham.
Mr. Deasy.	Mr. H. Herbert.
Mr. Whiteside.	Mr. Fitzgerald.

Mr. *William Gibson* examined.

Mr. *Richard King* examined.

[Adjourned to Monday, at Twelve o'clock.

Lunæ, 5° *die Maii*, 1856.

MEMBERS PRESENT:

Sir J. GRAHAM in the Chair.

Mr. Kirk.	Mr. De Vere.
Viscount Monck.	Mr. E. Ellice.
Sir E. Perry.	Mr. Fitzgerald.
Mr. Grogan.	Mr. Macartney.
Mr. Deasy.	Mr. Walpole.
Mr. Whiteside.	

Mr. *Samuel Frederick Adair* and Mr. *Richard King* examined.

[Adjourned to Thurday, at Twelve o'clock.

Jovis, 8° *die Maii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Whiteside.	Sir J. Graham.
Mr. Deasy.	Sir E. Perry.
Viscount Monck.	Mr. Fitzgerald.
Mr. E. Ellice.	

Mr. *Richard King* and Master *Acheson Lyle* examined.

[Adjourned to Monday, the 19th, at One o'clock.

Lunæ, 19° *die Maii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Whiteside.	Mr. H. Herbert.
Mr. Macartney.	Sir J. Graham.
Sir E. Perry.	Mr. De Vere.
Mr. Henley.	Mr. Fitzgerald.
Viscount Monck.	

Right Hon. *Abraham Brewster* examined.

[Adjourned to To-morrow, at Twelve o'clock.

Martis, 20° *die Maii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Sir J. Graham.	Viscount Monck.
Mr. Henley.	Mr. Herbert.
Mr. Whiteside.	Mr. Fitzgerald.
Sir E. Perry.	Mr. Macartney.
Mr. De Vere.	

Right Hon. *Abraham Brewster* examined.

[Adjourned to Thursday, at Twelve o'clock.

Jovis, 22° die Maii, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Henley.	Mr. H. Herbert.
Mr. Whiteside.	Sir J. Graham.
Mr. E. Ellice.	Viscount Monck.
Mr. De Vere.	Mr. Fitzgerald.
Sir E. Perry.	

Master *Acheson Lyle* again examined.

Richard Malins, Esq., a Member of the House, examined.

[Adjourned to Monday, at Twelve o'clock.

Lunæ, 2° die Junii, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Sir E. Perry.	Lord Monck.
Mr. Henley.	Mr. H. Herbert.
Mr. Kirk.	Mr. De Vere.
Mr. Whiteside.	Mr. E. Ellice.
Mr. Grogan.	Mr. Macartney.

Resolutions proposed by Chairman read 1°, as follows:

"1. THAT it is the opinion of this Committee that it is expedient to create additional facilities for the sale and transfer of land, and the disencumbering of encumbered estates in Ireland.

"2. That the system of conferring an indefeasible title on judicial sales of encumbered estates in Ireland should be perpetuated.

"3. That the benefits flowing from that system should be extended to unencumbered estates.

"4. That a tribunal ought to exist in Ireland, having power to confer an indefeasible title on the sale of all estates, the titles to which, being submitted to a judicial investigation, should be found satisfactory.

"5. That such power should be confided to the Court of Chancery in Ireland.

"6. That in order to enable that Court to administer this new jurisdiction with advantage to the public, it is essential that its constitution should be altered, and its procedure and practice reformed.

"7. That the office of Master in Chancery should be discontinued, but with a power to the Lord Chancellor to retain the present Masters to aid in disposing of the existing business of the Court of Chancery, and the arrear of business in the Encumbered Estates Court.

"8. That two Vice-Chancellors should be appointed, and that the Court of Chancery should hereafter consist of the Lord Chancellor, the Master of the Rolls, and the two Vice-Chancellors.

"9. That a Court of Appeal in Chancery should be constituted, to consist of the Lord Chancellor and an additional Judge to be Lord Justice of the Court of Appeal.

"10. That all appeals from orders or decrees of the Master of the Rolls and Vice-Chancellors respectively, and all rehearings of decisions of the Lord Chancellor, should be determined by the Court of Appeal.

"11. That each Judge of the Court of Chancery should have the entire conduct of each cause in his Court from its commencement to its termination.

"12. That the Master of the Rolls and Vice-Chancellor respectively should have attached to their Court two Chief Clerks and two Junior Clerks.

"13. That such Chief and Junior Clerks should be appointed by the Judge of the Court (subject to the approval of the Lord Chancellor), and hold their offices until removed.

 "14. That

"14. That each of such Clerks should be removable by order of the Judge of the Court to which he was attached for cause, or by an order to be made by such Judge and any other of the Judges of the Court, without stating therein any cause.

"15. That the Court should be armed with extensive powers to reform and regulate its practice and procedure, so as to attain economy, simplicity, and expedition, and should be bound to make general orders accordingly.

"16. That the Court should be authorised to reduce such stamps and fees as tend to interfere with the despatch of its business, or the publicity of its proceedings.

"17. That, in order to provide a fund in aid of the funds out of which the ordinary expenses of the Court are now paid, the Court should be authorised to deduct from the purchase-money produced by the sale of lands a graduated per-centage, to be fixed by general orders of the Court, but not in any case to exceed one per cent.

"18. That on some given day the powers of the Encumbered Estates Court should cease, and its business be transferred to the Court of Chancery.

Receivers.

"19. That the law and practice of the Court of Chancery in Ireland, in relation to the appointment of Receivers over real estate, requires to be further amended.

"20. That the appointment of Receivers should be discouraged.

"21. That, in order to lessen the necessity for the appointment of Receivers, in suits for the sale of land, the sale should take place at the earliest practicable stage of the suit.

"22. That the Court should be empowered to refuse the appointment of a Receiver, unless it should be made appear to the Court that the interests and protection of the parties required it.

"23. That the Court should be also empowered to refuse a Receiver, where it appeared that the appointment of a Receiver would not be productive of substantial benefit to the parties.

"24. That the Act 11 & 12 Geo. 3, c. 10 (Irish), by which Courts of Equity in Ireland are authorised to appoint Receivers for the purpose of discharging arrears or interest on mortgages, should be repealed.

5 & 6 Will. 4, c. 55.
3 & 4 Vict., c. 105.
7 & 8 Vict., c. 90.
12 & 13 Vict., c. 95.
13 & 14 Vict., c. 29.

"25. That the several Acts which regulate the right of a judgment creditor in Ireland, against the real estate of his debtor, require to be reconsidered."

Committee deliberated.

Statement of the Taxing Masters of the Court of Chancery in Ireland put in and read by Chairman.—Ordered to be printed.

[Adjourned to Thursday, at Twelve.

Jovis, 5° die Junii, 1856.

MEMBERS PRESENT:

Mr. Attorney-General for Ireland in the Chair.

Sir E. Perry.	Mr. De Vere.
Mr. Kirk.	Mr. Deasy.
Sir J. Graham.	Mr. H. Herbert.
Mr. Henley.	Mr. Grogan.
Viscount Monck.	Mr. E. Ellice.

Resolutions proposed by Sir *E. Perry* read 1°, as follows:

"That it is the opinion of this Committee—

"1. That public opinion in Ireland is strongly in favour of an indefeasible title being conferred by a Court of Justice on the sale of encumbered estates.

"2. That the sale of unencumbered estates ought to be attended by the same advantages in law as encumbered estates.

"3. That the granting of an indefeasible title cannot be safely granted to any Court of Justice, unless the duties of investigating and deciding on title are committed entirely to the Judges of the Court, who should be thoroughly conversant with conveyancing.

"4. That the Encumbered Estates Court in Ireland, by the ability and knowledge of the Commissioners, by its simple and economic procedure, and by the publicity which attends all its proceedings, has on the whole given great satisfaction.

"5. That

" 5. That, by removing the locality of the Court to the vicinity of the Four Courts, by strengthening the staff of the Commissioners, and by the establishment of a different Court of Appeal, a permanent Court of (two) Commissioners, having jurisdiction over the sale of all estates contracted or decreed to be sold, might be established with great benefit to the public.

" 6. That, if it be deemed advisable, such Court might be made a branch of the Court of Chancery.

" 7. That the jurisdiction of the Court should extend,—

" 1°. To all matters over which they have now jurisdiction.

" 2°. To all suits for the sale of unencumbered estates.

" 3°. To all decrees for the sales of estates committed to them by any branch of the Court of Chancery.

" 4°. To all incidental matters (such as the appointing of Receivers and the like) which may arise in the suits over which they have jurisdiction.

" 8. That the procedure of the Court should continue as at present, but subject to be modified by any general rules to be drawn up by the Commissioners, and ratified by the Lord Chancellor.

" 9. That each Commissioner should have the power of appointing an Accountant and a Chief Clerk, who should also act as Registrar and taxing officer, and two Junior Clerks.

" 9 *a*. That the salaries of the Commissioners should be pounds; their precedence shall be after ; their term of office *quam diu se bene gesserint*.

" 10. That on any pressure of business, or during the illness or absence of either of the Commissioners, the Lord Chancellor should have the power to appoint delegate Commissioners, not exceeding two.

" 11. That the Court of Appeal from any decision of the Commissioners, or any one of them, should be the same Court of Appeal as is provided for the Court of Chancery.

" Court of Chancery.

" 12. That the Masters in Ordinary should have original jurisdiction and all the powers of a Court of Equity over all administration suits, foreclosure suits, partnership accounts, and such other matters, under the 15th section of Sir John's Romilly's Act, as petitioners should wish to set down, and to be heard by any Master in Ordinary.

" 13. That the Lord Chancellor should be enabled to appoint one or more accountants (not exceeding) for the Court of Chancery, to whom any Judge in Equity should be at liberty to refer any disputed account, with such liberty to strike a balance, or make a special report therein, as to the Judge shall seem fit.

" 14. That on the two first vacancies occurring amongst the Masters in Ordinary, no fresh appointments should be made without the authority of Parliament.

" 15. That the Court of Chancery should hereafter consist of the Lord Chancellor, the Master of the Rolls, two Title Commissioners, and two Masters in Ordinary.

" Receivers.

" 16. That the law and practice of appointing Receivers be assimilated to the law and practice of England, and that on any vacancy in the office of Receiver Master, the appointment be not filled up, except upon the certificate of the Lord Chancellor to the Lords of the Treasury, that it is essential for the despatch of business in the Court of Chancery that a special officer for the receiver business should be appointed.

" Court of Appeal.

" 17. That a Court of Appeal in Chancery should be constituted, to consist of the Lord Chancellor, and a Lord Justice, with power to the Lord Chancellor to call in a Common Law Judge; and on any difference of opinion between the Judges, a further appeal to the House of Lords to be open to the parties.

" 18. That such Court of Appeal should hear all appeals from the Master of the Rolls, the Title Commissioners, or the Masters in Ordinary, but that parties should be at liberty to appeal to the House of Lords direct.

" 19. That appeals from any decree or order of the Lord Chancellor should lie to the House of Lords direct."

Resolutions proposed by Mr. *Whiteside* read 1°, as follows:

"THAT it is the opinion of this Committee—

"1. That no exceptional tribunal ought to be permanently established; and as the pressing necessity which called the Encumbered Estates Court into existence has ceased, the Legislature ought not to renew any enactment which operates to suspend or obstruct the function of the Court of Chancery in the sale of encumbered estates.

"2. That while it is expedient to suffer the powers of the Encumbered Estates Court to expire, so far as they might enable it to receive fresh petitions for the sale of lands, it would be desirable to prolong its existence for any period which may be necessary for enabling the Commissioners, or two of them, to complete the several matters now pending before them, according to the practice peculiar to the Court in which such matters are now in course of prosecution.

"3. That any transfer of the arrears of business from the Encumbered Estates Court to the Court of Chancery would embarrass the latter as well in the disposal of its own causes, as in the conduct of the matters so transferred from a Court wholly differing from it in forms and procedure, and would tend to increase the delay already experienced by the suitors in the Encumbered Estates Court, by reason of the accumulation of business existing there.

"4. That every suitor in the Encumbered Estates Court ought to have an appeal from the Commissioners, as a matter of right, and not at the discretion of the Court, as at present.

"5. That it is expedient the Court of Chancery in Ireland should undergo a thorough revision both in constitution and procedure.

"6. That the constitution of the Court ought to be altered by the abolition of the office of Master in Ordinary, with the present system of references and reports, and by the appointment of Vice-Chancellors, who, with the Master of the Rolls, shall severally hear causes and matters which shall eventuate in further inquiries, so that the same judge shall conduct the entire proceeding in every stage, from the commencement to its termination.

"7. That the first Vice-Chancellors ought to be appointed from the existing Masters, according to their standing as such, and that such appointments would be expedient, as well from motives of economy as because the gentlemen who at present fill the office of Master, have had a continued experience of five years under the Irish Chancery Regulation Act, which in a large class of cases constituted the function of the Master, in the same manner as now proposed in reference to the new Judges of the Court.

"8. That in reforming the procedure of the Court in conformity to its proposed reconstruction, the Legislature ought to frame a complete code, nevertheless leaving to the Court the power of making general orders for varying the details of practice from time to time.

"9. That it is expedient to invest the Court of Chancery in Ireland with power to give indefeasible titles to purchasers of land sold by the Court for the discharge of encumbrances, and that such power should extend to suits instituted not only by encumbrancers, but also by owners of estates encumbered; but that, in the latter case, such a power ought to be carefully guarded, so as to defeat such suits when fraudulent or collusive.

"10. That the Legislature, in conferring upon the Encumbered Estates Court the new and extraordinary powers to grant indefeasible titles, wisely confined that power to sales of encumbered estates, in which varied and adverse interests are so represented as to supply a salutary check upon fraud, and that the few cases which have been discovered where colourable encumbrances have been collusively created in order to bring them within the jurisdiction of the Court, were frauds upon the Court and upon the policy and intention of the Legislature, and, as such, ought not to be considered as furnishing a legitimate ground for conferring upon any tribunal the power to give an indefeasible title—as the instance of an alleged owner whose estate is not *bonâ fide* encumbered.

"11. That the continuance of the present system of the management of estates by Receivers under the Court of Chancery in Ireland, is contrary to public policy.

That it is desirable that legislation not only should effect a radical change in the position and duties of Receivers, with a view to diminish the expense now incident to their management, but also to reduce the classes of cases in which such appointment shall be made to those in which such appointments may be indispensable, and to accelerate the sales of estates where a sale is inevitable.

"12. That in cases where the rental of the debtor is small, it is not expedient to leave the creditors to the alternative of two expensive remedies, a sale, or the appointment of a Receiver; and that it is expedient to give the creditor over such estates a cheap remedy, by empowering the Court to grant him possession for the purpose of paying himself, if he shall so elect.

"13. That it is expedient in every case to provide a Court of Appeal in Ireland from all decisions

decisions of the Court of Chancery, which from its constitution and procedure shall be cheap, expeditious, and satisfactory.

"14. That such Court ought to consist of more than one judge; and unless same shall be composed of three judges at least, a difference of opinion among the members of the Court would induce the disappointed suitor to a further appeal to the House of Lords."

Motion made, and Question proposed, "That the Resolutions proposed by the Chairman be now read 2°, paragraph by paragraph" (*Chairman*). Amendment proposed, to leave out the words, "the Chairman," in order to insert the words "Sir Erskine Perry," instead thereof (Sir *E. Perry*):—Question, "That the words, 'the Chairman' stand part of the question," put and agreed to.

Question, "That the Resolutions proposed by the Chairman be now read 2°, paragraph by paragraph," put and agreed to.

First proposed Resolution read, considered, and postponed.

Second proposed Resolution read. Amendment proposed, to leave out the word "perpetuated," in order to insert the words, "continued for a time to be limited," instead thereof (Sir *J. Graham*):—Question put, "That the word proposed to be left out stand part of the Resolution." Committee divided:

Ayes, 7.	Noes, 4.
Viscount Monck.	Sir J. Graham.
Mr. Herbert.	Mr. Ellice.
Mr. De Vere.	Mr. Henley.
Sir E. Perry.	Mr. Whiteside.
Mr. Kirk.	
Mr. Grogan.	
Mr. Deasy.	

Proposed Resolution agreed to.

Third proposed Resolution read.

Question put, "That this Resolution be agreed to." Committee divided:

Ayes, 6.	Noes, 5.
Viscount Monck.	Sir J. Graham.
Mr. Herbert.	Mr. Ellice.
Mr. De Vere.	Mr. Henley.
Sir E. Perry.	Mr. Whiteside.
Mr. Kirk.	Mr. Deasy.
Mr. Grogan.	

Fourth proposed Resolution read:—Amended by leaving out the word, "all," in line 2.

Question, "That this Resolution, as amended, be agreed to." Committee divided:

Ayes, 7.	Noes, 4.
Viscount Monck.	Sir J. Graham.
Mr. Herbert.	Mr. Ellice.
Mr. De Vere.	Mr. Henley.
Sir E. Perry.	Mr. Whiteside.
Mr. Kirk.	
Mr. Grogan.	
Mr. Deasy.	

Fifth proposed Resolution read.

Question put, "That this Resolution be agreed to." Committee divided:

Ayes, 5.	Noes, 6.
Viscount Monck.	Sir J. Graham.
Mr. Herbert.	Mr. Ellice.
Mr. De Vere.	Mr. Henley.
Mr. Grogan.	Mr. Whiteside.
Mr. Deasy.	Sir E. Perry.
	Mr. Kirk.

Sixth proposed Resolution read, amended, and agreed to.

Seventh proposed Resolution read.

Committee deliberated.

[Adjourned to Monday, at One o'clock.

Lunæ, 9° *die Junii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Whiteside.	Mr. De Vere.
Mr. Kirk.	Mr. Seymour Fitzgerald.
Sir E. Perry.	Mr. Macartney.
Mr. Walpole.	Mr. Grogan.
Viscount Monck.	Sir J. Graham.
Mr. Herbert.	Mr. Henley.

Committee deliberated.

Seventh proposed Resolution read.

Amendment proposed, to leave out all the words after the first word "That," to the end of the Resolution, for the purpose of adding the words, "The Masters in Ordinary should have original jurisdiction and all the powers of a Court of Equity over all administration suits, foreclosure suits, partnership accounts, and such other matters, under the 15th section of Sir John Romilly's Act, as petitioners should wish to set down, and to be heard by any Master in Ordinary," instead thereof (Sir *E. Perry*):—Question put, "That the words proposed to be left out stand part of proposed Resolution." Committee divided:

Ayes, 4.	Noes, 7.
Viscount Monck.	Sir James Graham.
Mr. Herbert.	Mr. Walpole.
Mr. De Vere.	Mr. Macartney.
Mr. Kirk.	Mr. Fitzgerald.
	Mr. Whiteside.
	Sir E. Perry.
	Mr. Grogan.

Words added.

Proposed Resolution, as amended, agreed to.

Eighth proposed Resolution read, and negatived.

Ninth and following proposed Resolutions read, considered, and postponed.

Motion made and Question, "That the Lord Chancellor and Master of the Rolls, and, subject to such rules as the Chancellor shall make, the Masters in Ordinary should have power to obtain the assistance of valuators, surveyors, accountants, merchants, engineers, actuaries, or other scientific persons, to enable such court or judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons" (Sir *E. Perry*), put and agreed to.

Motion made and Question, "That, subject to the above rules, every Equity Judge should dispose of the whole suit before him without any reference" (Sir *E. Perry*), put and agreed to.

[Adjourned to Friday next, at Twelve o'clock.

Jovis, 19° *die Junii*, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Mr. Kirk.	Mr. S. Fitzgerald.
Mr. Macartney.	Mr. H. Herbert.
Sir E. Perry.	Sir J. Graham.
Mr. Grogan.	Mr. De Vere.
Viscount Monck.	Mr. Deasy.

Motion made and Question put, "That it is the opinion of this Committee, that on the two first vacancies occurring amongst the Masters in Ordinary no fresh appointments should be made without the authority of Parliament; and on such vacancies respectively the

the establishment shall be entitled to compensation or employment in the remaining offices" (Sir *E. Perry*). Committee divided:

Ayes, 4.	Noes, 4.
Mr. Macartney.	Mr. Kirk.
Sir E. Perry.	Viscount Monck.
Mr. Grogan.	Mr. Fitzgerald.
Mr. Deasy.	Mr. De Vere.

The Chairman declared himself with the Noes.

Motion made and Question proposed, "That it is the opinion of this Committee that evidence on all disputed facts should be taken by *vivâ voce* testimony, and before the Judge himself who tries the cause; but that in any case where the ends of justice would be better attained, it should be competent to the Judge to receive affidavit evidence, and also evidence by commission" (Sir *E. Perry*). Amendment proposed, to leave out all the words from the first word "That," to the end of the Question, in order to add the words, "The practice of receiving evidence *vivâ voce* in the Court of Chancery before the Judge who has to decide the cause is a sound one, and that it is desirable that increased facilities should be afforded for a more extensive application of the system" (Mr. *S. Fitzgerald*), instead thereof:—Question, "That the words proposed to be left out stand part of the question," put and negatived.

Words added.

Question, as amended, put and agreed to.

Motion made and Question put, "That it is the opinion of this Committee, that the tribunal to confer an indefeasible title on the sale of estates decreed to be sold on judicial investigation should be the Encumbered Estates Court, and that such Court should be a branch of the Court of Chancery, and that the procedure of the Court should be subject to be modified by any general rules to be drawn up by the Commissioners, and ratified by the Lord Chancellor" (Sir *E. Perry*). Committee divided:

Ayes, 3.	Noes, 6.
Sir E. Perry.	Mr. Kirk.
Mr. Grogan.	Mr. Macartney.
Mr. Fitzgerald.	Viscount Monck.
	Sir James Graham.
	Mr. De Vere.
	Mr. Deasy.

9th proposed Resolution again read, amended, and agreed to.

10th proposed Resolution read, amended, and agreed to.

11th, 12th, 13th and 14th proposed Resolutions, by leave, withdrawn.

15th proposed Resolution read, amended, and agreed to.

16th, 17th and 18th proposed Resolutions read; by leave, withdrawn.

19th, 20th, 21st, 22d, 23d, 24th and 25th proposed Resolutions, read and agreed to.

Motion made and Question put, "That this Committee being of opinion that the system of conferring an indefeasible title on judicial sales of encumbered estates should be continued without intermission, recommends that the Encumbered Estates Court should be continued for a period not exceeding one year" (Mr. *S. Fitzgerald*). Committee divided:

Ayes, 2.	Noes, 2.
Mr. Macartney.	Mr. Grogan.
Mr. Seymour Fitzgerald.	Mr. Deasy.

The Chairman declared himself with the Ayes.

Motion made and Question, "That in lieu of the present appeal from the Encumbered Estates Court to the Privy Council, all future Appeals should be to the Court of Appeal in Chancery" (*Chairman*), put and agreed to.

Motion made and Question, "That such Appeals should be of right" (*Chairman*), put and agreed to.

Motion made and Question, "That the place for holding the Sittings of the Court should with all convenient speed be changed from its present locality to the Four Courts (*Chairman*), put and agreed to.

Resolved, "That the Chairman do move The House for power to make a Special Report, and to report Opinion, together with the Minutes of Evidence taken before them."

[Adjourned to Monday, at One o'clock.

Lunæ, 23° die Junii, 1856.

MEMBERS PRESENT:

Mr. ATTORNEY-GENERAL for Ireland in the Chair.

Sir E. Perry.
Mr. Kirk.
Sir James Graham.
Mr. Macartney.
Lord Monck.

Resolutions read.

Resolved, "That these Resolutions be reported to The House."

Resolved, "That having regard to the said Resolutions, the Committee do not consider it expedient to go through the Bills, which they direct the Chairman to report to The House."

Ordered to report.

EXPENSES OF WITNESSES.

NAME of WITNESS.	Profession or Condition.	From whence Summoned.	Number of Days absent from Home under Orders of Committee.	Expenses of Journey to London and back.	Allowance during Absence from Home.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Charles James Hargreave	Commissioner of Encumbered Estates.	Dublin	10	6 – –	10 10 –	16 10 –
Montifort Longfield	ditto	ditto	6	4 15 –	6 6 –	11 1 –
Master Murphy	Master in Chancery.	ditto	8	8 – –	7 8 –	15 8 –
William Gibson	Solicitor	ditto	7	7 – –	14 14 –	21 14 –
Richard King	Clerk in Court of Chancery.	ditto	16	7 4 –	16 16 –	24 – –
W. J Cooper	Solicitor	ditto	10	7 – –	21 – –	28 – –
Master Lyle	Master in Chancery.	ditto	8	7 – –	8 8 –	15 8 –
Master Lyle	ditto	ditto	5	5 15 –	5 5 –	11 – –
Right Hon. Abraham Brewster.	ditto	ditto	5	5 15 –	5 5 –	11 – –
					£.	154 1 –

MINUTES OF EVIDENCE.

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MINUTES OF EVIDENCE.

Jovis, 6° die Martii, 1856.

MEMBERS PRESENT.

Mr. Solicitor-General for Ireland.	Mr. Whiteside.
Sir James Graham.	Mr. De Vere.
Mr. Edward Ellice.	Sir Erskine Perry.
Mr. Henley.	Mr. H. Herbert.
Viscount Monck.	Mr. Grogan.
Mr. Seymour Fitzgerald.	

MR. SOLICITOR-GENERAL FOR IRELAND, IN THE CHAIR.

Charles James Hargreave, Esq., called in; and Examined.

C. J. Hargreave, Esq.

6 March 1856.

1. *Chairman.*] I BELIEVE you are a Member of the English Bar and a Queen's Counsel?—Yes.

2. You have been one of the Commissioners of the Incumbered Estates Court in Ireland since its commencement, have you not?—Yes.

3. When did that court commence business?—It commenced making the general rules in August 1849.

4. The actual court business commenced in November 1849, I believe?—Yes.

5. And you have been since that time acting as a Commissioner?—Yes.

6. Are you able to give the Committee any statement of the amount of business which has been done down to the present time; that is to say, the amount of money which has been brought into court?—I have obtained from the officer who keeps the statistical record of the proceedings of the court, a statement showing, in the same forms which have been usually published, the different amounts of money that have been received in court, and the payments that have been made out of court; that is brought down, I think, to the end of February last. The total amount of purchase money is represented as about 16¾ millions; in round numbers, say 17 millions.

7. Is that the amount of money which has been actually brought into court?—The purchase money; that is, money either brought into court, or which still remains to be brought into court, or which will be credited against demands due to persons who have purchased.

8. Are you able to state what amount of money has been actually paid out of court, or allowed in credits to purchasers?—In round numbers, 14 millions appear to have been paid out or credited to purchasers.

9. And the balance remains in court, or is to be brought into court to be distributed?—Yes.

10. Can you also give the Committee any approximation to the quantity of business now remaining in the court to be disposed of?—That is always exceedingly conjectural; because it is impossible to get any statistics as to business that is not done, although it is easy to get statistics as to business that has been done. I directed the secretary some time since to make as correct an estimate as he could of the amount of business remaining undone, judging merely by the

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petitions. He seemed to think that there was a rental of about 400,000*l.* a year remaining in court unsold; but of course a great deal of that is property which never will be brought to sale. In many cases, when a petition is presented for the sale of the whole of a man's estate, it may turn out to be necessary to sell only a small portion of the estate; in some cases a half, in other cases a third, and in other cases two-thirds. The rentals stated upon the petitions are very often fallacious, so that the estimate I have given is quite conjectural.

11. Would your court be enabled to furnish the Committee with any real approximation to the amount of business now remaining to be disposed of?—It would be very difficult to do so; we could get out a Return with more certainty than I am now able to give it; but not knowing at all how far the rentals given in the petitions are the correct rentals, and not knowing to what extent sales will have to take place, we are unable to say very accurately what amount of business remains in court.

12. Does the sum of 400,000*l.* which you have mentioned represent estates, with reference to which you have made orders for sale, or against which petitions have been received?—Estates against which orders for sale have been made.

13. Do you mean absolute orders, or conditional orders?—Absolute orders.

14. Does that approximate sum of 400,000*l.* a year all represent unsold estates, against which absolute orders for sale have been made?—I think so.

15. Can you give the Committee the amount of rentals sold which produced the sum you have stated, approximating to 17 millions of money?—I have no doubt that could be obtained; I think in some returns, which have been already made, that will be discovered.

16. Mr. *Henley.*] Could you, coupled with that return, also furnish a statement of the claims upon the estates, and how far the proceeds of the sales have been able to satisfy them?—A return could be given as to how far the claims upon the estates were satisfied by the purchase money; but any return of the claims not satisfied by the purchase money would be to a great extent conjectural, because the Commissioners never take the trouble to ascertain the amount of claims unsatisfied.

17. *Chairman.*] When you have ascertained that there are claims upon the estate amounting to the purchase money, you do not go farther?—We do not go farther; we do not trouble ourselves to settle the priorities, or the amount due upon the footing of claims, when we have satisfied ourselves that the amount of the purchase money will not reach them.

18. Mr. *Henley.*] Is there any record to show what are the charges that could be made upon the estate?—The schedule of incumbrances, when it is settled, would show what claims are ascertained, and what is due upon them; the draft schedule of incumbrances would show what other claims there were upon the estate not adjudicated on by the Commissioners; and therefore whether valid claims or not, I could not say.

19. That information could be furnished, with the amount of purchase money and the rental?—Probably that could be got at, but it would be a very difficult and embarrassing inquiry to go into.

20. *Chairman.*] Would not such a return be enormous?—Yes.

21. Mr. *Whiteside.*] Can you form any notion of the amount of claims left unpaid?—I cannot form the slightest estimate at all.

22. *Chairman.*] As I understand, your evidence is, that when the claims which you have ascertained exhaust the purchase money, you do not go farther?—We do not.

23. In reference to giving an indefeasible title, when you have made an order for the sale of an estate, do you, before you make the absolute order for sale, take any, and what, precautions to ascertain who the parties are that are to get notice of your proceedings?—We do; but that is ascertained principally from the *ex-parte* statement of the petitioner; we assume the statement of the petitioner upon the petition to be true, and taking it to be true, we judge who are the proper parties to have notice that there is a conditional order for sale, in order that they may have the opportunity, if they like, of showing cause against the order.

24. In addition to giving express notice to the parties whom the petitioners show ought to have that notice, do you take any precaution, by public advertisement, before the absolute order is made, to apprise the public that the petition has

has been presented?—No, not before the absolute order is made; but immediately after the absolute order for sale is made, a notice of that order is given in the newspapers, and all parties who have claims upon the estate are invited to take notice of it. If any of those parties could show the order in any way to be an erroneous order, they would come in with an application to set it aside, which is substantially the same thing as showing cause against the order for sale. Moreover, a list of petitions is published in the newspapers in Ireland, and receives a very extensive circulation immediately the petition is presented.

25. In addition to the notice in the newspapers, I believe you also give notice to every one in possession of the estate?—Under what we call, in our court, the 13th General Rule, all the tenants on an estate are immediately served with notices, calling upon them to show what the nature of their tenancies is, and to establish their titles to their tenancies, so that every one in possession, whether holding under leases, or as tenants from year to year, is sure to get notice.

26. After the absolute order for sale is made, the title to the estate, before the sale takes place, undergoes a strict judicial investigation?—It undergoes a strict judicial investigation by the Commissioners. The title-deeds and all the documents relating to the estate are ordered to be brought in by every person who is supposed to have any. Sometimes there is an abstract of title existing; if not, the petitioner's solicitor prepares an abstract of title; that abstract of title, together with the title-deeds, is placed before the Commissioner. The Commissioner reads the abstract of title, and satisfies himself whether the title is good, or what steps ought to be taken in case of defects appearing.

27. In addition to that, does not the Commissioner direct whether searches of registries ought to be made?—On reading the title he directs what searches in the Registry of Deeds Office, and what searches for judgments, and other debts of record, will be necessary.

28. Having thus minutely investigated the title, if that investigation discloses the names of any parties who ought to have express notice, and who have not yet had notice, I presume that notice is given to those parties?—Notice is always given to those parties if they can be discovered; very often their titles, if they have any, accrue under very old transactions, and it is not very easy in some cases to find them or their representatives; in that case we endeavour to ascertain them as far as possible, and we call particular attention in the final notice to claimants to any particular deeds or judgments under which an adverse claim may exist.

29. Must not a considerable time elapse in carrying out those investigations between the order for sale and the sale actually taking place?—Yes; but some of the steps may go on concurrently.

30. In that interval any party who has or can establish a claim to the estate may apply to the Court to have that order for sale set aside?—Yes; if his title is inconsistent with the order for sale, he may apply to set aside the order. If his title be merely as an incumbrancer, he files a claim with a view to establishing his title against the purchase money.

31. There is this statement in the answers given by the Master of the Rolls in Ireland with reference to the proceedings in the Incumbered Estates Court: "It has, I understand, been repeatedly stated by the Commissioners for the Sale of Incumbered Estates that their conveyance under the 27th section of the 12th & 13th of the Queen, c. 77, gives a good title to the purchaser as against all the world, without the least regard to the question whether the title is good or bad, or whether the Commissioners had any right whatever to sell the estate; in other words, that they may sell the estate of one man to pay the debts of another. This is not an imaginary case; it has actually taken place." Have you ever known yourself such a proposition as that stated by the Commissioners?—I do not think the Commissioners have ever stated it exactly in those terms. I think the Commissioners probably intimated that if unfortunately they were to make a mistake in the investigation of a title, the title being really a defective title, they and all courts would hold the sale as a good sale, and the purchaser would not be troubled with any inquiries upon that subject; the purchaser would acquire, in short, a perfect Parliamentary title. No doubt the Commissioners are liable to err, just as all other judges are.

32. Every court is liable to err, I presume?—Yes.

33. In the administration of this vast sum of nearly 17 millions of money, which is the amount brought in for sales, have you known any instance in which

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the Commissioners have sold the estate of one man to pay the debts of another?—I do not know of any instance in which we have sold what I should be prepared to call the estate of one man to pay the debts of another. I have known two or three instances in which the boundaries between adjoining estates have not been very well known. In some cases there have been no physical boundaries at all, and in one or two instances we have encroached a little upon the adjoining property, particularly in bogs, where the distinction between one property and another is not marked by any physical boundary.

34. Will you state the cases of that nature which have come under your actual cognizance?—I could merely state them from remembrance; there was one case in which about 13 acres, I think, of bog was included, the amount of its value was so trivial, that it was not worth while to make an inquiry. I think the probability is, that it had been wrongfully sold, and that the actual line of boundary went off at a rather more acute angle than the line of boundary by which we sold. The consequence was, that a small slip of bog was mapped into the conveyance which perhaps ought not to have been. In that case the proprietor of the adjoining estate discovered it before the funds were paid out of court, and he claimed compensation against the funds. He was unquestionably entitled to compensation, but the difficulty was to name a sum small enough for compensation without throwing ridicule upon the claim.

35. Was that a case in which there was no physical boundary?—There was no physical boundary. The surveyor employed in marking the line was guided by the owner of the estate which we were selling; the owner of the adjoining estate had, perhaps, no knowledge of the survey being made.

36. To guard against mistakes of that sort, is it not the practice of the Court to publish the rental, containing a map of the boundaries?—Wherever the Commissioners sell by map, that map is published with the rental, and it is circulated amongst the adjoining proprietors. I do not know that we have any rule which requires it to be so circulated, but I am sure the practice and the habit is to do so.

37. Have you known any case of what may be called mistake, or alleged mistake, save cases of disputed boundary between two estates?—In the sale of the Martin Estate, upon which the Law Life Insurance Company had an incumbrance, there was in the first instance a sale of a townland, the title to which became questioned subsequently; before the conveyance was executed the parties who made the adverse claim came in. The conveyance was executed to the Law Life Insurance Company upon an undertaking from them that they would deal with the property in such manner as the Commissioners should direct in case of the adverse claim being established. Ultimately the adverse claim was established, the Law Life Insurance Company considering it of such exceedingly small value that they preferred to give it up rather than go to the expense of an inquiry upon the subject. That was the case of a townland which we supposed had been included in the Martin Estate title-deeds, but which was, I suppose, really not included. I do not remember the name of it now, but suppose we call the name appearing in the deeds Doughal; then this was either a separate townland called East Doughal or a part of Doughal. We took it to be the latter, and therefore supposed it to be included in the documentary title; there was nothing upon the deeds to show the contrary, and it was that species of property of which there was no apparent possessor; it was merely mountain land, of little or no value at all; in truth, the Law Life Insurance Company were in actual possession of it.

38. The party claiming possession had a full opportunity of asserting his rights?—His rights were preserved.

39. And protected by the order of the court?—Yes.

40. Will you be good enough to state from your experience during the period which you have been acting as a Commissioner of this court, what have been the results of giving Parliamentary titles?—I do not know that I could state them better or more clearly than they are given in the answers of the Commissioners; you will find them at page 7 of the Appendix to the Report.

41. Nothing has occurred to alter the opinion which you, as one of the Commissioners, have expressed in that paper?—No, nothing whatever; I am more impressed than ever with the importance of the last of the heads to which the Commissioners there allude; that is, the gradual abolition of receiverships over land for the purpose of paying off debts.

42. One

42. One of the advantages which you point out, is the absolute and final settlement of all rights in respect to the land which you sell?—Yes.

43. In fact, the purchaser gets the estate free from every claim?—Except those subject to which he purchases.

44. In the course of your proceedings have you not also to settle the title of estates with reference to tenants?—Yes.

45. So that the purchaser going into possession under your conveyance knows who his tenants are, and the tenants are bound by the statement of the tenants in the schedule to the deed?—They are.

46. Sir *J. Graham.*] Will you have the goodness to refer to the bottom of page 8 of the Report; there is a reference to the evidence of the Master of the Rolls for Ireland, with respect to the legal effect of the 27th section of the Act under which your authority is exercised; may I ask if you have any doubt with respect to the power conveyed by that section to grant an indefeasible title; the words at the bottom of page 8 are, "Such was the intention of the Legislature in passing the Act, and it appears to have been fully carried out by the words which they have used." Is it your opinion that that intention is fully carried out by the 27th section?—Individually that is my opinion, undoubtedly; I never was able to frame to myself the slightest doubt upon the language of the Act of Parliament. I am aware that doubts have been suggested.

47. Mr. *Whiteside.*] Is there not a decision of Chief Justice Monaghan in the most express terms upon the subject?—He put it upon the broadest possible grounds.

48. *Chairman.*] Am I not right in saying that none of the other Judges of the court dissented from his opinion?—I am not sure that he had their concurrence. If they had agreed with him in the opinion which he expressed, that was a very easy and obvious mode of dealing with the case before them; they adopted the more difficult mode by evading this question.

49. Sir *J. Graham.*] With your large experience and high legal authority, in your opinion, if it were thought proper to continue the power, could words less ambiguous be used conferring the power of the 27th section?—I do not think they could; I think the words of the 27th section, with the 49th clause, together, completely make the title indefeasible.

50. Confirmed by the judgment to which you referred, of the Chief Justice of the Common Pleas, you think the power stands as safely as it could be conveyed by fresh words?—I think so; I would not recommend the introduction of fresh words into any Act of Parliament; I think it might throw a slur and doubt upon the past.

51. *Chairman.*] You have already joined in the opinion of your brother Commissioners, that it is desirable that this system of giving a Parliamentary title should be perpetuated?—Yes.

52. And further, that it is desirable that the power should be extended by giving the owner of an unincumbered estate the right to petition for the sale of his estate?—Yes.

53. Upon what tribunal, in your judgment, should this power be conferred?—That is, in truth, whether it would be more desirable to make the Incumbered Estates Court permanent, or to transfer its jurisdiction to the Court of Chancery.

54. Sir *J. Graham.*] Without going the whole length of making the transfer, or making the court permanent, might there not be a prolonged continuance of the court?—That is a very difficult kind of court to establish successfully, a court which is to last for a certain number of years; neither the Judges nor the officers like to belong to any such court, and all the best officers would of course go away immediately they had other openings in life before them. I think it would be scarcely possible to keep up for any long period of years a temporary court of that sort; we suffer very much from the anomalous position in which we are placed, being always under the apprehension that our best officers will quit us whenever they have an opportunity.

55. Viscount *Monck.*] Have any left you?—I do not think any have from that cause solely.

56. Mr. *S. Fitzgerald.*] That would depend upon the period for which the court was prolonged; if it were prolonged for two years, it would not be the same question as if it were prolonged for 10 years?—It is pretty nearly the same question; the data by which men would be governed are a little different in the two cases, but the principle is precisely the same.

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57. Sir *J. Graham.*] As between transfer and permanence, what is your opinion?—If you could always insure Judges who would not neglect the administrative part of the business, which is the most essential part of the Incumbered Estates Court business, I think it desirable that it should be transferred to the Court of Chancery. If, however, a person become simply a Judge, I think he would be very apt to devote himself entirely to the judicial business, and he might be induced in time to give over the administrative business too much to chief clerks. Perhaps the Commissioners of the Incumbered Estates Court would labour under the same difficulty in time; but I think if the courts are kept distinct, that the Judge would perhaps bear more constantly in mind the fact that he was not entirely a Judge, but also an administrative officer, exercising, perhaps, more responsible functions in his administrative capacity than in his judicial capacity.

58. If the court were permanent, it would be the duty of the Commissioner to exercise judicial functions with respect to the distribution of the proceeds of the sale?—No doubt; and also in relation to the titles to the estate whenever any question arose before him. But the most responsible business is that which you may call the non-litigatory business; that part which is not brought into controversy, where he has to deal *ex parte*, and where he has to rely much more on his own vigilance and sagacity than upon the representations of interested parties.

59. Mr. *E. Ellice.*] It is proposed by this Bill to reform the Court of Chancery, and instead of enabling the Judge to refer the administrative part of the business to a Master to appoint clerks to the Judge, as is now the case with the Commissioners of the Incumbered Estates Court; would not the judge himself, having only a clerk under him and not a Master to refer to, be equally compelled then to attend to the administrative business as to the judicial business?—I think he would; I think he ought to consider the administrative business just as much his duty as the judicial business.

60. Would it not be then much more pressed upon him than under the present system of the Court?—I think very much more so. He cannot get rid of the case by a reference.

61. Mr. *Henley.*] You have stated that you think the most difficult part of the duty of the Court has been that business which has not been litigated, where, if I may use such a phrase, friendly proceedings have been brought before it?—It is not exactly the friendly proceedings that I allude to, but that portion of the business which the Judge has to do *ex parte*.

62. Can you give the Committee any information whether many persons have sold their own estates?—The number is very considerable, and is increasing, I think, every day; the majority of cases now are cases in which the owners of the estates themselves have come forward to sell. There are a great number of cases in which it would appear as if the creditor was the petitioner; whereas, in truth, the owner is the real petitioner; it is merely some friendly creditor who has come forward, and whose name is used; there are few cases now of what you would call adverse proceedings by way of sale.

63. Are there any cases which have taken place where, under those circumstances, parties have bought back, and have become possessed again of their own estates?—There may be a few. I think it sometimes occurs in this way; the incumbrances being comparatively small, the man, in the course of proceedings, changes his mind, and he would rather not sell; he allows it to go through the court, borrowing money, and consolidating all the incumbrances into one, and providing funds for the existing creditors out of that source; in that case he goes through the court, leaving the estate substantially just as much incumbered as it ever was, but with the benefit of a Parliamentary title; but that is a thing that does not occur sufficiently frequently to call for much observation.

64. Are there any of those cases in which there has been no litigation where parties have become re-possessed of their own property, and any incumbrancer thrown overboard?—That could not be the case if the incumbrances were created by the person himself; if they were merely incumbrances on the estate and not debts of his own, it might possibly be so.

65. I am not speaking of incumbrances of his, but incumbrances affecting the estate?—That may have taken place, but it does not imply any abuse.

66. Mr. *Whiteside.*] Have you read the petition which I presented from Mr. Lundyfoot?—I have not seen it.

67. What he stated was this: he lent a sum of money to the proprietor of an estate

estate in county Wicklow; that you sold that estate in the Incumbered Estates Court; it was bought in by a trustee for the family for half its value, and that he and creditors to the extent of 40,000 *l.* more were left unpaid; whereas the estate was worth double the sum for which it was sold in the map?—The gravamen of the charge or statement appears to be, that the estate was sold under value. It is no matter who purchases; if it sells for a sufficient sum, then the creditors are paid; if it sells for an insufficient sum, then the creditors are not paid.

68. The petitioner's statement was, that he lent money upon an estate in Wicklow; that the only option that he had was to purchase the estate for 80,000 *l.* He had not 80,000 *l.* with which to buy it. He had lent a few thousands; the estate produced 40,000 *l.*; the incumbrances were 70,000 *l.* or 80,000 *l.* The estate was bought in by trustees for the family, and he got nothing. Can such a thing take place often?—The same thing would have taken place if the property had been sold for the same sum to another person; I do not know sufficient of the case to say whether it took place *modo et formâ*; something of that sort was perhaps done; an estate was sold at a price insufficient to pay all the creditors; it was sold to a person who was previously the owner of the estate; the debts not being his debts, but debts put upon it by his ancestors, he was not liable for them; and he stood in the same position as any other person.

69. Viscount *Monck.*] The same operation might have taken place in a sale out of the Court of Chancery?—It might.

70. *Chairman.*] Does it make any difference that the owner is the purchaser?—I do not see that it does make any difference; it used to be sometimes said to be the case, when the owner came in to bid, that people would not bid against him, consequently the estate was knocked down at an undervalue; but the creditors have notice of all those proceedings, and they must be presumed to be present at the sale, to protect themselves in the ordinary way.

71. Mr. *Whiteside.*] If you put up an estate which is worth 80,000 *l.*, and an incumbrancer has lent upon it 5,000 *l.*, he may attend the sale, but he has not the means to purchase an estate worth 80,000 *l.*; if that estate is sold in the mass for 40,000 *l.* he must lose his money?—The incumbrancer has always the opportunity of seeing that the estate was not improperly sold in the mass; he could attend the Master's Office and take care that the estate was sold in lots, so that he could bid for the lots if he desired.

72. *Chairman.*] Your practice, I believe, is to sell estates not in the mass, but in lots?—The ordinary practice is to sell in lots.

73. Mr. *Whiteside.*] Was the estate to which I have referred sold in lots?—Yes; I presume the petitioner is referring to one large lot; I do not remember much of the case, but I think it was a house and demesne; it was in fact what would be called a large lot, and it was sold at a price which would perhaps now be thought inadequate.

74. Allow me to call your attention to a statement in the lower part of page 59, in the Appendix to the Report: "There is one well-known case, where an owner, in the name of a trustee, or family creditor, had the conduct of the proceedings"?—I suspect that is not the fact; if it be the case which I have in my mind, it was not the fact.

75. "The house, demesne, and extensive woods were sold in one lot, valued at about 1,400 *l.* per annum, and the owner bought back the estate at a great undervalue, he having the command of the early incumbrances, which were mostly family charges, and for which he got absolute credit. Thus the machinery of the Incumbered Estates Court was put in motion simply to diminish the burthens on the estate in the hands of the still incumbered owner, and to tail off creditors to the amount of 20,000 *l.*"?—The grievance appears to be that the estate was sold too cheap.

76. Would not the case with respect to which you have been asked occur; a man has a mortgage upon an estate, and the owner, by the trustees, brings it into your court, gets the conduct of the sale, and the estate of the value of 40,000 *l.* is sold for 20,000 *l.*; the mortgagee to the extent of 5,000 *l.*, not having 20,000 *l.* wherewith to purchase, loses his debt altogether?—If an estate which is worth 40,000 *l.* sells for 20,000 *l.*, no doubt that conclusion will follow.

77. *Chairman.*] Do not you sell to the highest bidder?—Yes.

78. It is perfectly immaterial whether the owner is the highest bidder or a stranger?—It is no matter who is the highest bidder, whether he be the owner

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or not, provided he have, either by means of credit or by means of cash, sufficient funds at his disposal to pay for it.

79. Mr. *Whiteside.*] How could he according to the ancient law have done it; how could he have gone and bought the estate in the Court of Chancery?—He, as owner, could not in that character have sold it in the Court of Chancery, and if sold by the creditors, as was done in the Incumbered Estates Court in this case, he might have bought; and if he could purchase an estate worth 40,000*l.* for 20,000*l.*, exactly the same consequences would have followed.

80. In cases where creditors were getting their interest upon estates well secured, and the owners wished to tail off the creditors in the way described, might not that occur to the amount of millions in your court?—It might; I cannot form any opinion of the amount of unpaid debts. If all creditors were absolutely supine, things of that kind might occur, but they have the protection of the sale being a public one.

81. Mr. *E. Ellice.*] Is the conduct of these cases in the Incumbered Estates Court commonly confided to the agent of the first incumbrancer, or to the agent of some person interested in the family to whom the property belongs?—No; it is generally entrusted to the solicitor who presents the petition. Under some circumstances we transfer the carriage of the proceedings from the petitioner's solicitor to the solicitor of some other person who may appear to have a much larger interest in an economical sale.

82. But if you had reason to believe that the solicitor presenting the petition represented rather the interest of the prior incumbrancer, the family to whom the property belonged, and that he might act adversely to the ultimate creditors, would a remedy be addressed to that by the court?—Yes; the remedy generally is, that the creditor who is in peril, or the class of creditors who are in peril, are authorised to employ a solicitor to watch the case in all its stages.

83. Mr. *Whiteside.*] If a member of the family presents the petition, is it not the family solicitor who has the conduct of the sale?—It would be the solicitor who presents the petition; I presume they would generally employ the family solicitor.

84. Suppose there are 20 incumbrancers upon an estate, and 10 of them only can be paid, and the attorney for the 20th, who never can be paid, presents the petition, is he not the person who will have the conduct of the sale in that case?—He is, unless some person can show the Commissioners clearly that he has a much more vital interest than the gentleman who has presented the petition; in that case we should, without any scruple, transfer the carriage of the proceedings to his solicitor.

85. But, generally speaking, has not the attorney who presents the petition the conduct of the sale, and the management of the proceedings?—He has; because in most cases there is no one more interested in it.

86. Although he may be concerned for a party who can by no possibility get sixpence out of the fund?—He may. In experience the Commissioners have not found the practice of changing the solicitors of very much importance. One solicitor does the business much the same as another.

87. Although he be the 20th of the number, and seeing that nothing will ever be paid to him, will he be paid his costs before the first creditor, who has a mortgage upon the estate, has a right to be paid?—If he presented his petition before the last Continuance Act, he will; if since the last Continuance Act, he will be paid his costs in that priority only to such an extent as the Commissioners order; that is, in substance, such costs as must be incurred, no matter who has the sale.

88. *Chairman.*] The costs of the carriage of the sale must be incurred, no matter who has that carriage?—Yes; the costs of printing, surveys, advertising, and so forth.

89. Do not you regard the solicitor having the carriage of the sale very much in the light of an agent of the court, acting under your immediate control and check?—Always.

90. If any party having an interest in the sale, thinks that the solicitor employed is not a proper person to have the carriage of the sale, or that he has an interest in making the sale not as productive as possible, has that party any remedy?—He must show us, on judicial grounds, and not mere suspicions, that that is the fact, and the solicitor having the carriage of the sale would be displaced immediately.

91. No matter what solicitor has the conduct of the sale, every party has a right to intervene, with a view to have the sale carried on in a way most beneficial to the parties entitled to the produce of it?—He has.

92. Mr. *Henley.*] You have stated that in your opinion it makes no difference whether the party purchasing is a stranger or the owner; is it not the case that many of the estates may have been sold under the forced and hasty process of the court at a low rate of purchase comparatively?—If they are to be called forced and hasty sales, undoubtedly that is the case.

93. Then the consequence would be that any possible increase in value in two or three years would go directly into the pocket of the purchaser, be he a stranger or the former owner, and the incumbrancers upon the estate would be absolutely and clearly thrown over?—Yes, but in the instance of the owner purchasing, that could never be the case if they were his own debts.

94. I am using the word "incumbrances" as things affecting the corpus of the estate?—In such a case as that, there is no distinction, whether it be the owner of the estate or a stranger who purchases.

95. *Chairman.*] I believe during the last two years the rate of purchase money in your court has ranged very high?—For more than two years; for the lost three years and a half, you may say.

96. Sir *J. Graham.*] Is not the effect of the indefeasible title granted by your court to enhance the value, *cæteris paribus*, of land sold by you, above the fee-simple value of land all over Ireland?—I have no doubt there is that effect.

97. Viscount *Monck.*] Is not the expeditious and cheap mode of sale in the Incumbered Estates Court very likely to counterbalance any inconvenience which might arise from a hasty sale?—Speaking of it as a question of public policy, yes.

98. Speaking of it as a question of value, do not you think the necessary expenditure upon a sale in the Court of Chancery would be probably as large, affecting the estate, as the depreciation arising from a forced sale in the Incumbered Estates Court would?—Yes; under the system of the Court of Chancery there would be no sale; it would be continued under receivers, to the ruin of the creditors of the estate, and every one.

99. *Chairman.*] Taking the year 1850, which was the first year of the operation of the Incumbered Estates Court, and which was a very bad year, land being very much depreciated in value, did not the estates sold in that year in the Court of Chancery range lower than the estates sold in your court?—Yes; and there would be the disadvantage of not having a Parliamentary title, over and above all the other disadvantages.

100. Mr. *De Vere.*] In cases where an estate is sold at a lower price than is sufficient to cover the prior incumbrancers, causing a loss to a subsequent incumbrancer, is not that subsequent incumbrancer supposed to be present at the sale, and is it not competent to him, when the estate is sold at a price considerably under the value, to postpone the sale?—It is competent to him to apply to the court to postpone it if he thinks the price inadequate. The Commissioners are exceedingly slow in postponing, if the sale comes forward regularly by public auction. The Commissioners are generally pretty peremptory in selling, unless the price be grossly inadequate.

101. If such a case occurred as I have mentioned, the case of a sale by the owner, where the price appeared to be ridiculously inadequate, would not the Commissioners, upon the application of the subsequent incumbrancer, who would lose his money, adjourn the sale?—He might apply, and the Commissioners would consider the application. In the case referred to, an application was made by a puisne incumbrancer, and the Commissioners refused the application on the ground that, in their view, it was sold at a fair and reasonable price; that it was the utmost that could be got for it. If it were put up for sale now, it would realise, perhaps, more.

102. Mr. *Henley.*] Can you give the Committee any information, taking the year 1850, at what rate of purchase the Commissioners would have considered an estate sold ridiculously low, so that they would stop the sale?—If the rate of purchase were estimated upon the actual receipts from the property, the Commissioners would think it low if it sold for less than from 18 to 20 years' purchase at that time; at the present time we should expect it to sell at 23 or 24 years' purchase, not taking it upon the nominal rental put forward, but the *bonâ fide* net receipts.

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103. Are the Committee to understand that in the year 1850, a year in which we are told property was so much depreciated, no sales were made under the Incumbered Estates Court at less than 18 years' purchase upon the actual rent or value?—I could not venture to state that; forming an opinion now of what took place then, I should consider it rather an undervalue if it sold for less than 18 years' purchase upon the actual receipts.

104. You have stated that the Commissioners would not have been likely to have stopped the sale unless they considered the purchase money ridiculously low?—The language of the general rule laid down by the Commissioners, under the sanction of the Privy Council, is "clearly inadequate."

105. I wish to have a distinct answer to this question: would the Commissioners have considered, in 1850, that an estate was sold ridiculously low if it was sold at less than 18 years' purchase?—No, I do not think I could state that as a general rule of practice.

106. Would you go so far as 15 or 16 years' purchase?—No, I will not go to any number of years' purchase, however small; we were influenced by other considerations. Very often the property was in so ruined and so dilapidated a condition, and tenantry upon it of such a character, that we and the parties were very glad to sell it at any price. There were so many considerations then applicable, that we could not be governed exclusively by the number of years' purchase on the rental or receipts.

107. Then the answer which you gave to a Member of the Committee, that the Commissioners would stop the sale upon the application of a puisne creditor if the offer was ridiculously low, must be taken with some qualification?—It must be taken with this qualification, that the acting Commissioner upon the spot would form the best opinion he could as to value.

108. Mr. *Whiteside.*] Is it not very rare to postpone a sale?—Very rare now.

109. Mr. *Henley.*] Then other elements besides the amount of purchase operate upon the Commissioners' minds in either acceding to or rejecting the application of a puisne creditor?—No, I think not; the Commissioner looked at the rental; at all the circumstances before him; at the receiver's accounts; and in fact collated all the information he could, and as well as possible decided upon the spot whether it would be desirable or not to postpone the sale.

110. Whether the amount of purchase money were 13, 14, 15, 16, or 17 years?—Yes; that was one of the elements he took into consideration, but not the exclusive element.

111. Mr. *H. Herbert.*] Is it not very difficult, from the charges upon the estates, to state the number of years' purchase at all?—Very difficult.

112. Mr. *Henley.*] All my questions have had reference to the actual receipts of the estate?—We looked at the nominal rental as rather evidence of what the property was once worth, and what perhaps, after some expenditure, it might be worth again; we looked at the receiver's accounts to see what it had been producing for the five or six years preceding.

113. Taking the actual receipts of the five or six years preceding, are the Committee still to understand that estates were not considered to be sold ridiculously low if they sold much below 18 years' purchase?—I do not think that I ought to state that; the Commissioners were not governed exclusively by the number of years' purchase; speaking of it at the present time, forming an opinion now, I should say that few estates were sold at less than 18 years' purchase upon the actual receipts.

114. Mr. *H. Herbert.*] When you talk of years' purchase, do you deduct the probable amount of poor rate which would have to be paid, or is it included?—We should deduct all the outgoings. If I was asked the question, how many years' purchase a property realised, I should divide the purchase money by the net rental of the estate, after deducting the outgoings.

115. Mr. *Henley.*] You used the term "net receipts" before; the receipts coming into the owner's pocket, of course could not be the net receipts, unless the outgoings were deducted?—No; in the receiver's account we should discover the gross income of the estate; that is what the tenants paid. We should discover from that also what the estate was liable to in the way of poor-rates, &c.

116. The residue would be the net receipts applicable to the owner, or to the incumbrancer, according to circumstances?—Yes.

117. Sir *J. Graham.*] Your power upon estates is subject to three conditions; the estate must be incumbered; it must be incumbered to one half of its value,

or

or be under a receiver; and it must be an estate in fee, or it must be a lease in perpetuity, or a lease of 60 years unexpired, before you can operate against the will of the owner. How do you estimate the incumbrances, under the second condition, being to one-half of its value?—We require the owner to bring in an affidavit, stating what the receipts from the property have been during every year, for seven years prior to the time that the petition is presented.

118. Gross or net receipts?—Both; we require him to state the gross receipts, the various outgoings, the poor rate, and other charges.

119. Then that question of half value is always investigated before you operate against the will of the owner?—It is, wherever the owner specially makes that case.

120. Viscount *Monck.*] What do you multiply the annual receipt by, in order to ascertain the gross value?—Under that section we are not governed by the value of the estate, but by the rental, as compared with the interest upon the incumbrances.

121. Mr. *Grogan.*] At the period your court commenced, in 1850, we are all aware that it was a very distressing time in Ireland, and in some districts the charge for poor-rates were very high, particularly in the south and west; in making an estimate of the half value, did you estimate the amount charged upon the estates for poor-rates at that time?—Yes. But we required the owner to go back for a period of seven years, and we formed the best estimate we could of the income, taking into consideration all those seven years; that would take in a period when the particular circumstances of the famine would not apply.

122. Has it come to your knowledge, that during that period of great distress the poor-rates exceeded a pound on the pound value?—It has come to my knowledge that there have been nominal rates of that amount struck. I always thought it was not a very accurate way of stating it; they were undervaluing the property very much.

123. If the property had been worth a pound in value, and rates to the amount of a pound were struck, would not the whole of the property be absorbed in the payment of the rates?—For that year it would, if they were paid.

124. In the case of your average, taking the rates struck at a pound, the average brings it to 15 *s.* on your seven years; should you estimate the net receipts of that estate at 5 *s.*?—If it were possible that so extreme a case should occur for seven years together, of course we should.

125. Would you sell the estate at a number of years' purchase, the 5 *s.* being the assumed value?—We should sell the estate then as being an estate incumbered to more than half its value.

126. Would not that be practically selling it for the amount of the poor-rates?—If the poor-rates have been suffered to fall materially into arrear, then the arrear presses very heavily upon the purchase money. It has occurred very frequently that the arrears of poor-rates have been so excessive as to prejudice the puisne creditors very seriously. The Court of Chancery suffered the owner to become tenant under the court; he generally paid no rent, and allowed the rates to accumulate to the ruin of the creditors.

127. Sir *J. Graham.*] Will you allow me to call your attention to a recommendation in the Report of the Incumbered Estates Commissioners, at page 10, "With respect to the second limit, namely, that which restricts the right of an incumbrancer to force a sale, unless the property be incumbered to half its value, or be under a receiver, we recommend that such restriction should be altogether removed, its continuance being incompatible with the recommendations herein contained." Have you considered that question, and do you concur in that recommendation?—I do; I concur in the recommendation on the ground that there is not at present in the Court of Chancery any restriction imposed upon the creditor when he proceeds in the sale of an estate; he can always proceed in Chancery, and could proceed there during the time he was unable to proceed in the Incumbered Estates Court. Moreover, as the Commissioners recommend that the Court of Chancery shall be the only court in which an incumbrancer can proceed to sell by judicial process, if the restriction be retained, a creditor who has the misfortune to have too good a security will have no means whatever of realizing his debt by sale.

128. *Chairman.*] Having got a decree in Chancery, in such a case, he could

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come to your court and sell under that decree?—Having got less than a decree; having got merely a receiver.

129. Sir *E. Perry.*] If the other recommendation of the Commissioners was followed out, then unincumbered estates might be sold?—That necessarily follows.

130. *Chairman.*] I understood you to express an opinion that it would not be advisable to continue the Incumbered Estates Court for any given period, say five or ten years?—I think that would be the very worst of all the courses to be adopted.

131. I understood you further to say, that assuming the system is to be continued, to be made perpetual, that the most expedient course is to transfer it to the Court of Chancery?—I incline to think so; I have not a very strong opinion upon that point.

132. Assuming for a moment that the course adopted was to make the present Incumbered Estates Courts perpetual with this jurisdiction to sell estates, and give a Parliamentary title, would you not, in fact, by that means, be creating a second Court of Chancery under another name?—You would, in effect; the two courts would not be absolutely co-ordinate in jurisdiction; the Estates Court would be performing functions which could be performed also by the Court of Chancery; the Court of Chancery would have other functions which the Estates Court could not perform.

133. From what you have seen of litigation in the Court of Chancery in Ireland, is it not the case that the majority of the suits there involve the sale of an estate?—They do involve very generally the sale of estates, certainly, but they did not actually sell much before the Incumbered Estates Court operated.

134. Supposing the Incumbered Estates Court to be made perpetual, you would have a jurisdiction for selling estates exercised in Chancery, and a similar jurisdiction exercised in the Estates Court?—Yes.

135. In following out that jurisdiction in the Estates Court, that court would have in effect to determine almost every question that could arise in Chancery?—It would; we have now to determine every species of question which can arise in a court of equity.

136. You consider, when you have sold an estate, that the equities attaching to the estate are transferred to the purchase money?—We do.

137. It is necessary to dispose of those rights and equities?—Yes.

138. Are not those the very questions which the Court of Chancery in the ordinary exercise of its jurisdiction is dealing with every day?—Yes.

139. Assuming that to be the case, is it not correct to say, that continuing the Incumbered Estates Court potentially, you would have in the country two Courts of Chancery?—I think that is a tolerably fair representation.

140. Mr. *E. Ellice.*] Is there any difference in practice in disposing of the fund after it has been realised from the sale, between the Incumbered Estates Court and the Court of Chancery?—There is a good deal of difference in the procedure of the two courts; we are guided in the distribution of the funds by exactly the same principles of equity that the Court of Chancery is, but the mode of procedure is very different.

141. Would a greater amount of time be consumed in disposing of the funds in the Court of Chancery than in the Incumbered Estates Court?—I think a great deal more time would be consumed generally in the Court of Chancery.

142. Would a greater expense attend the disposal of the fund in the Court of Chancery than in the Incumbered Estates Court?—A very much greater expense undoubtedly.

143. *Chairman.*] According to the present practice of the Court of Chancery?—Yes; I am referring to the present practice.

144. But assuming the practice of the Court of Chancery to be simplified and made analogous to the practice in the Incumbered Estates Court, do you think it would take more time to dispose of the rights affecting the purchase money in Chancery than in the Incumbered Estates Court?—No; I do not know any reason why it should, if the practice is the same.

145. Do not you think it is quite possible by a reform of the Court of Chancery to accomplish the same results as those which are now worked out in the Incumbered Estates Court, both in time and expense?—I think you may introduce the practice of the Incumbered Estates Court into the Court of Chancery,

Chancery, and if it be fairly and honestly worked, it would produce the same effects.

146. Supposing the Incumbered Estates Court to be continued, and supposing the practice of the Court of Chancery to be reformed, you would have two courts going on together, deciding on questions of the same principles and regulated by a similar practice?—Yes, you would; just as you have three common law courts doing the same thing.

147. Would you call that judicious or necessary?—It does not appear to be necessary, nor in the abstract would it appear to be judicious.

148. Sir *J. Graham.*] Do you sell now without fees or stamps?—Without fees; but the conveyance to the purchaser is subject to the ordinary *ad valorem* stamp duty.

149. Your practice is different from that of the Court of Chancery as to fees and stamps, is it not?—None of the proceedings in the Incumbered Estates Court are subject to fees; they are prohibited by the statute.

150. If the transfer were made to the Court of Chancery, it would be necessary to make a similar provision with respect to the sales of incumbered estates made by the court?—It would be necessary to make some provision upon the subject of fees.

151. Mr. *E. Ellice.*] Are there no stamps upon the proceedings as well as upon the sale?—There are no stamps upon any of the proceedings in the court, but the conveyance to the purchaser is subject to the ordinary *ad valorem* stamp duty.

152. But there would be stamps, under the existing regulation, on all the proceedings upon a present sale in the Court of Chancery, would there not?—There would.

153. Sir *E. Perry.*] What would be the establishment of Judges required in the Court of Chancery, if the business was transferred?—That is a very difficult question to answer; one cannot say beforehand what amount of unincumbered estates may be introduced into the court by the proposed change.

154. That is an element which you cannot calculate without experience; but, taking the present business of the court, what number of Judges would be required?—I think two Vice-Chancellors, and the Master of the Rolls, with a staff of clerks provided for them, would be sufficient; but they would probably be very hardly worked.

155. If the present court were made permanent, without the alterations proposed in the Bill, there would be six Judges, I may say, in the Court of Chancery; that is, five Masters acting as Judges; the Master of the Rolls, six; and three Commissioners, nine; therefore if the two courts are continued in existence, there will be nine Judges as against three?—That is very true; but, under this system the chief clerks would have to do a very large quantity of business, which at present devolves upon the Masters in their magisterial capacity.

156. I see by the answers in the Report the solicitors particularly appear to complain of the great number of courts sitting at the same time in Dublin?—They have great grounds of complaint, certainly; there are very numerous courts of equity all sitting together, and some of them quite remote in position from others.

157. Therefore, as comparing the two points of permanence and transfer, is not the preference likely to be given to the latter by those doing the work, than having two courts?—I think that is a fair element for consideration.

158. Mr. *H. Herbert.*] Would you not anticipate a very large increase in the amount of business if the change proposed in the Bill before us were adopted in relation to the sale of incumbered estates generally?—I think it would be considerable; probably at first it would not be very great, but it would grow very much upon the court: the practice of making sales of land would become very common in Ireland, which at present it is not.

159. Would not there be a difficulty in borrowing money upon an estate which had not a Parliamentary title?—I am told that in cases of loans on estates it is sometimes made a condition that there shall be a Parliamentary title, and it is always an advantage.

160. In any case of raising money upon an estate, would not the process of getting a Parliamentary title have to be gone through?—I have no doubt it would often be gone through if unincumbered estates were brought into court.

161. Mr. *Henley.*] Do not the Incumbered Estates Court administer the funds, subject to the same equity as the Court of Chancery?—Yes.

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162. The appeal from the Incumbered Estates Court is not to the Court of Chancery?—No; the appeal from the Incumbered Estates Court is to the Judicial Committee of the Privy Council.

163. If the Incumbered Estates Court were to be permanently established, might it not happen that the Judges of the Incumbered Estates Court might take a different view of the causes to that which the Lord Chancellor or the Judges sitting in Chancery might take?—Yes; they might differ on questions of law.

164. In that case you might have one branch of the law subject to different jurisdictions, going on in Ireland, with an ultimate appeal to different tribunals?—Yes.

165. So that, in fact, you would get two laws, instead of one, established?—I would rectify that by making the final appeal to the same tribunal, namely, the House of Lords.

166. In the event of the Incumbered Estates Court becoming permanent, you would have necessarily to change the mode of appeal, would you not?—I think it would be desirable.

167. Sir *J. Graham.*] Is it not now optional to grant an appeal, or not?—It is.

168. A suitor has no right to an appeal?—No; the Act of Parliament provides that there is to be an appeal, if the Commissioners allow an appeal; the practice of the Commissioners has been to give an appeal whenever it was asked for, if the case involved any point of law whatever, no matter how trivial a point; but not to permit an appeal on mere points of practice.

169. Mr. *Whiteside.*] Suppose such a case as this, that A. claims 20,000 *l.*, and B. claims 20,000 *l.*; that B. had the right, A. claiming the right to it, if you chose, as a commission, to say, "I am sure I am right, I will grant no appeal," there would be no appeal?—If the party could prevail upon the three Commissioners to agree in so strong and so arbitrary a decision, no doubt there would be that power.

170. Is there any court of justice, county court, or civil bill court, in which the right of appeal depends upon the judge?—I do not know at all.

171. *Chairman.*] In whatever shape this system is continued, in your opinion, it is not desirable that that provision should be continued?—Probably not; it is a provision of very little importance.

172. Mr. *Whiteside.*] Did you not state that there was a great advantage in a Parliamentary title?—I did.

173. I believe there are three classes concluded; all the tenants upon the estate, the buyer, and the seller?—Yes.

174. Am I to understand you to say, that except in the case that you mentioned of the confused boundaries, there have been no instances, under your knowledge, of rights lost to parties?—I cannot at present call to mind any such instances.

175. Is Mr. Rolleston a most eminent practitioner in your court?—He is.

176. At page 52 of the Appendix, Mr. Rolleston says, "I know many cases of hardship have arisen from parties having actually lost valuable interests in land by not being served with notice, or being otherwise informed of the proceedings to sell, as bearing on their interests; and I have had many cases before me exemplifying this; for instance, middlemen holding valuable interests under the owner by leases, and their tenants being the occupiers, the latter are the persons served with the notice and returned on the rental, and after the sale the middle interest is gone, as the occupier has too often a direct interest in not letting his immediate landlord know anything of the notice." Have you seen that statement?—Yes.

177. Do you believe that statement to be accurate?—I cannot think that it has occurred to any considerable extent; I can readily believe that some middle interests have been squeezed out. This kind of thing, for example, took place when the sales first began; many of the middle interests were then of no value, and it was rather an object of the middlemen to get rid of them; therefore, when the notices were served they did not come in, and of course they appeared to be precluded. After a year or two their interests began to be worth something again; then they came forward with a claim for compensation for the loss of their leases.

178. You observe the words of the witness are "valuable interests." In the case of a gentleman in England who does not get the notice, and you sell the estate

estate in Ireland, is he not squeezed out?—His title, if it was to a valuable interest, would appear upon the registry, and in that case we should discover it; and if the lease, being a very valuable one, does not appear on the register, we, in destroying it, do no more than would be done by an ordinary sale out of court.

179. An eminent counsel who practises before you says that valuable interests have been lost. I put this case: suppose the middleman is in England, and the tenant in Ireland, if you serve a notice upon the tenant in Ireland, and the middleman in England does not get the notice, is he not squeezed out?—He is; but that is a thing which can very rarely happen.

180. In reference to the tenants, does not that impose upon you and every Commissioner additional care, and the necessity of further inquiry before you sell under a Parliamentary title, which concludes everybody?—It imposes upon us the necessity of investigating the title very accurately, and making the proper registry searches.

181. Mr. *E. Ellice.*] Do you not investigate the title under which the leaseholder holds his land?—We do not investigate the landlord's title; we merely investigate the title to the lease; that is, when we are selling the lease.

182. If the tenant holds from the middleman, his title must be from the middleman, and not from the landlord; do you not require information from the tenant as to whom he holds under?—Very rarely.

183. Mr. *Whiteside.*] Independently of the buyer and the seller, are not the titles of the whole of the tenantry upon an estate concluded by your act?—They are, undoubtedly.

184. If the tenant be a small farmer in the country who has not heard of the proceedings, and he is put in the rental as an occupier for 10 years, though he has a lease, he loses his lease, does not he?—He does.

185. Do you recollect the case of Lord Kingstown's estate?—I remember the sale of a part of the estate.

186. Do you recollect claims put forward by tenants upon the estate which was sought to be sold by a solicitor who is not now living, Mr. Sadleir, and when the agreements put forward by the tenants were investigated by your clerk, many of them turned out to be false?—I never heard anything of it at all.

187. They were rejected upon the rental, were they not?—The Kingstown Estate is not in my office; I do not know anything about the proceedings.

188. Is it not the fact, therefore, that because you can give a Parliamentary title, you are obliged by public advertisement, by notice, and by inquiry, to endeavour to satisfy yourselves as to the truth of the entire rental before you sell?—We always thought it our duty to make those inquiries.

189. Does not that impose additional labour upon the Commissioners?—It imposes some additional labour, not very much; it is in the main provided for by general rules applicable to all cases.

190. What is the entire staff of the court?—There are three Commissioners, each Commissioner having in his own chamber an examiner and examiner's clerks.

191. Is the staff 32?—I think the total staff is somewhere about 30.

192. With three Commissioners and 30 or 32 officers, you have the arrears which you described, that is, a rental to sell of about 400,000 *l.* a year; the answer given by yourself and your brother Commissioners is, that it would take two years to transact the court business?—Two years and next session; practically three years "will be sufficient for the completion of the business of the court."

193. "So far as its completion rests with the court;" does that mean so far as you and your brother Commissioners would be concerned in pronouncing the orders of the court?—No, I think not; I think it means the transaction of all business, except such business as necessarily requires time for its performance; for example, there may be sums of money left in particular cases to the credit of any matter which may not be distributable till the death of some person; if we did all the business which the Commissioners of the court could do, there would be still ultimately some residue left which they could not then do.

194. Taking the distinction which you took before, between the orders pronounced by the court, and the administrative part of your duties, does this answer include the administrative duty of the court?—It does.

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195. Do you think you could wipe out the whole of those arrears within three years?—I think we could very nearly; I should not like to pledge myself very strongly to it.

196. Sir *J. Graham.*] The number of cases not yet worked is 1,633, being nearly one-half of the entire number brought into court?—That implies that one-half of the number brought into court are totally finished. With reference to the other half in course of being finished, it does not imply what proportion is finished, or is not finished.

197. But the measure which you would adduce of the quantum remaining to transact is the 400,000 *l.* a year?—The sale of properties to about that extent, and the distribution of funds now in court to be distributed.

198. Mr. *Whiteside.*] Have there not been many petitions lodged since this Report was made?—No doubt there have been some.

199. Do you contemplate putting the whole of that business into the Court of Chancery?—As I understand, the Solicitor-general's Bill contemplates doing so.

200. Do you give your assent to that proposition?—I do not see any alternative.

201. Do you approve of it?—I think it is the best of all the courses that can be suggested.

202. Mr. *E. Ellice.*] Do you think a court constituted as is proposed by the Bill would be capable of discharging all those arrears, as well as the new business which would come upon it under the provisions of the Bill proposing to give titles to unincumbered proprietors?—I think that is very doubtful, because there may be a much larger accretion of business from unincumbered estates than we imagine; if that should be very large, then the two Vice-Chancellors and the Master of the Rolls and their staffs would not be sufficient.

203. Do not you think it would be almost sufficient business for two new Vice-Chancellors, during the next two years, to wind up the affairs which are now before the Incumbered Estates Commissioners, having a similar staff to that which the Incumbered Estates Commissioners now have?—I do not think they would be fully employed during the latter portion of that period. If they had no new business, and nothing but the arrears, or what is more properly called the business remaining undone in the Incumbered Estates Court, they would be fully employed for a certain time, but gradually the business would fall away.

204. For what time would they be fully employed in that business?—Perhaps 18 months. It is difficult to conjecture.

205. Have you not stated in your evidence that you require an additional staff, certainly ministerially, and perhaps judicially, to transact the business of the Incumbered Estates Court?—The ministerial staff since then has been slightly augmented.

206. Since the Report was made?—Yes.

207. If, therefore, you have increased the staff to do the existing business of the Incumbered Estates Court; if you have three Commissioners and 35 Assistants (you had 32 before), how is it possible for two Vice-Chancellors, not merely to transact the arrears, but to do all the business of the Court of Chancery; to transfer estates incumbered to any extent; and, in addition to all that business, to transfer unincumbered estates, investigating the titles thereto, and the rentals, which, as I understand from your evidence, would be more important because it would be wholly *ex parte*?—They would have, of course, the assistance of all the various officers now in existence in the Court of Chancery.

208. Have you satisfied yourself of the state of the Court of Chancery at this moment?—No.

209. Mr. *Whiteside.*] The Masters are to be dismissed, according to this Bill; are you aware that, at this moment, five gentlemen and four gentlemen are fully occupied, and have, in two or three offices, some arrears of existing business in the Court of Chancery?—I am not aware exactly of how that is. I was under the impression that they were not fully occupied at present.

210. Assuming, for the sake of argument, that the Masters are fully occupied, is it your idea that this quantity of business, about which we are now inquiring, is to be put into the Court of Chancery, and disposed of first, being pending business?—I do not know that it would be necessarily disposed of first.

211. If any new petition was lodged, do you contemplate that that new petition should be put at the tail of the existing arrears?—I think it should be.

212. Can

212. Can you tell the Committee within how many years, if you put a new case at the tail of the arrears, that new case would be finally disposed of?—That is difficult to say; it is impossible to say how many old cases would have to be disposed of before that came on, because the estates are not sold at all in the order in which the petitions came into court; it depends much more upon the vigilance of the gentleman who has the carriage of the proceedings.

213. The question is, whether it would be expedient to transfer the existing business of the Incumbered Estates Court to the Court of Chancery; it being pending business, it would be discharged and disposed of before the new business?—It would have priority if ready.

214. Have you satisfied yourself of the condition of things in the Court of Chancery, so as to enable you to state to the Committee, supposing the two persons referred to in the Bill were doing the business of the Court of Chancery, and doing the arrears of the business of the Incumbered Estates Court, within how many years a new petition for sale could be taken up and disposed of?—I think, if it was pressed forward, a sale could be had within two years without much difficulty.

215. Supposing a petition now is lodged in your court, having no Chancery business to transact, within what time would you be able to have a final sale and disposition of the money?—That depends very much upon the difficulty of the case; if it is a simple case, I should expect to finish it in about two years.

216. Take a difficult case?—If it involved very much litigation it might go on indefinitely; so far as depended upon any court, it would take three years, perhaps.

217. Did you read the evidence of the Masters in Chancery, stating that where they sell, (for they do sell, as you are aware,) they have been able to sell in six months, in nine months, and in twelve months?—Yes, I saw that.

218. That is to say, they have been able to sell in a much quicker time than you, from the state of business in your court, could manage to sell?—They are only selling 17 or 18 cases; we are selling as many hundreds.

219. Have you considered the effect of the other important question which is before the Committee, namely, the transfer of unincumbered estates?—I have endeavoured to consider it; of course it is very difficult to conjecture beforehand what amount of business it may involve.

220. Sir *J. Graham.*] The prompt taxation of costs upon a sale is an important matter, is it not, when a Parliamentary title is given?—It is; but that is not a matter of any difficulty.

221. Is there in your court any arrear in the taxation of costs?—I believe not.

222. Is that the case in the Court of Chancery at this moment?—I imagine the arrear in the taxation of costs in the Court of Chancery is very large.

223. If all this business were transferred from your court, where there is no arrear with respect to taxation of costs, to the Court of Chancery, where there is a very large arrear in the taxation of costs, would not great confusion ensue, and great delay?—If there was no additional officer there would be very great inconvenience, certainly.

224. Mr. *Whiteside.*] Can you state whether the cause of the confusion and delay in the Taxing-office in the Court of Chancery is not that when the Taxing Masters commenced their work, they were handed over the arrears of a thousand bills of costs?—I am not aware.

225. You could not state that it is not so?—No.

226. *Chairman.*] With regard to questions which have been put to you upon the staff of the court, supposing the present Incumbered Estates Court to be continued with its present judicial staff, the same consequences would appear to flow; that is, a new case would be equally retarded upon the continuance of the Incumbered Estates Court, as if the business of the Incumbered Estates Court were transferred to the Court of Chancery?—Precisely the same.

227. In your judgment would not two Vice-Chancellors, aided by two chief clerks, such as are pointed out in this Bill, having a salary of 1,000*l.* a year each (getting the best men you could for that salary), be able to do as much business as the present judicial staff of the Incumbered Estates Court?—I think the two Vice-Chancellors, with two chief clerks, and two junior clerks, would be able to do as much business as the three Commissioners do with their only one examiner each.

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228. Do you think transferring the business to two Vice-Chancellors in Chancery would be transferring it to a more efficient judicial staff than you have in the Incumbered Estates Court?—I think so.

229. So that the sales, instead of being retarded by the change, would be facilitated?—I think they would be facilitated if a superior system to that now in existence were pursued.

230. Mr. *E. Ellice.*] Your answer relates to the business now immediately before the Commissioners of the Incumbered Estates Court?—It does.

231. It does not relate to the further duties proposed by this Bill to be thrown upon the Court in the sale of unincumbered estates?—No.

232. *Chairman.*] I collect, then, your opinion to be, that a judicial officer, with such a staff as this Bill gives him, would be able to do considerably more business than a judicial officer without it?—He would be able to do more business than a judicial officer, situated as one of the Commissioners of the Incumbered Estates Court.

233. You have no assistant, but an officer called an examiner, have you?—That is all; we have practically one chief clerk instead of two.

234. You can hardly call him a chief clerk, because his salary is only 400 *l.*?—No.

235. Sir *J. Graham.*] Have you any Masters?—One Master.

236 Do you make references to that Master?—Occasionally.

237. Have you, in your Incumbered Estates Court, a system of references to Masters and reports?—It is almost a fallacy to call them by that name; they have nothing analogous to the references and reports which exist in the Court of Chancery; the Master's business consists chiefly in settling the rentals; he is the officer who has, practically, to deal with the tenants; he settles the rentals, and settles the conveyances; he takes upon himself small inquiries as to matters of fact and references on matters of account, but the quantity of business of the last description referred to him is very small.

238. Is not his office almost a sinecure, then?—No, it is a fairly-worked office; there is a great deal of business in the settling of rentals; his office is also judicial; he has to adjudicate upon the validity of all the tenants' leases.

239. Does the Master adjudicate without reference to the Commissioners?—He adjudicates without reference to the Commissioners in the first instance; there is an appeal from his decision to the Commissioner to whose office the case belongs.

240. *Chairman.*] You do not approve of the system of reference?—We adopted it as a *pis aller.* We could not appoint another Commissioner; so we appointed a Master.

241. Mr. *Whiteside.*] Let me draw your attention to the answer of the Incorporated Society of Solicitors, at page 31 of the Appendix: "The defects in the present system arise from the insufficiency of the establishment to meet the great press of business in the court. This is especially felt in the examination of the title, direction for searches, settling of schedules, and distribution of the funds. We consider that the schedules should in each case be settled before the sale, without prejudice to the arrangement of the rental in the meantime. It would be desirable that a more perfect record of the proceedings (easy of access) should be kept, especially with regard to the payment of money, and the data from which the sums due to each party are ascertained. The settlement of the schedule before the sale would in many cases prevent a sacrifice of property, by affording to each creditor the means of seeing his position in point of priority, and so enable him, if considered advisable, to purchase a part of the property. The records of the court are, for want of a sufficient staff and accommodation for holding them, in a very unsatisfactory state; it often happens that documents are mislaid, and cannot be found." That is the opinion of practising solicitors. Have you considered what would be the effect of transferring records and papers in that state to the Court of Chancery?—I do not think the records at present in the Incumbered Estates Court are in a state of confusion. At the time this answer was given, there was one office in which I think there was a good deal of confusion, arising from the gentleman at the head of the office being employed altogether in other matters; he was in fact at the same time the taxing officer of the court and the head of the general office; his time was fully occupied as the taxing officer, and he was not able to devote himself much to his business as the head of the general office; consequently the papers fell into confusion

confusion in the general office. The Lords of the Treasury have sanctioned another officer as the head of the general office, and since his appointment he has been getting the papers into correct order. I am tolerably satisfied that there is not now any serious confusion in that office. There was never, to my knowledge, any confusion in any other office.

242. This is the evidence of solicitors, who are the persons who have occasion to go to these offices; have you considered or examined the state of the offices in the Court of Chancery, with a view to the reception of your papers, documents, and deeds; what facilities or arrangements can be made for the reception of the documents relating to the arrears?—I have not considered that point. I presume that proper arrangements will be made for their reception if they are to be transferred.

243. Would not the removal of all the documents to the Court of Chancery create a considerable delay in the prosecution of the business; would it not be necessary to know whether there is a place to arrange them in?—It would be absolutely essential.

244. *Chairman.*] You rather conclude that no arrangement has been made at present?—I presume not; at present it would be premature.

245. Mr. *Whiteside.*] Do you contemplate the erection of new buildings before it would be proper to transfer so vast an establishment?—I am not acquainted with the amount of accommodation there; I should think it would be necessary to do so. Assuming that the Masters are to remain in their present offices, I take it for granted that there must be new buildings.

246. Have you read the petition of the attorneys which has been presented since the Bill came into Parliament, against the transfer of these arrears to the Court of Chancery?—No, I have not.

247. *Chairman.*] Does not the present judicial staff of the Incumbered Estates Court consist of three Judges?—Yes.

248. Am I right in stating that when Mr. Baron Richards became the head of the court, it was upon the understanding that he was not to be called upon to take any business in detail, but only to preside in the full court?—I am not aware whether such an arrangement was entered into, but for a considerable period Mr. Baron Richards did confine himself to that class of business, but afterwards, when the business became larger than was anticipated, he devoted himself to chamber work as well.

249. That has been comparatively recent, has it not?—I think for about the first year he did not attend much to the administrative business.

250. You are aware that in addition to being the Chief Commissioner, and presiding in the full court, he performed his duties as a Baron of the Exchequer, and sat very frequently day after day, so that the time which he could devote to the detailed business of your court was comparatively reduced?—It was of course limited by reason of his duties elsewhere.

251. Does not each Commissioner sit in his own chamber for the transaction of detailed business?—Yes.

252. In addition to that, the three Commissioners sit together in what are called full court sittings?—Yes.

253. That is, to hear motions that are properly made before the full court, or appeal motions from the order of any single Commissioner?—Yes.

254. I presume a considerable portion of what has been called arrear has necessarily arisen from the time of the Commissioners being occupied out of their own immediate courts?—I do not think that there is much of what can be properly called arrears; I think it ought to be regarded as business remaining undone, but in the regular course of transaction.

255. A great deal of that business remaining undone has arisen from your being taken two days in the week to sit in the full court, and also presiding at sales?—No doubt we should have made a more considerable progress in the business of the commission if we had not been so occupied.

256. According to the proposed scheme, the Vice-Chancellors would not have to hear an appeal from any other Judge, assuming that they were also released from the duty of presiding at sales; would not that give them more time, and render them a more efficient tribunal?—It would increase their efficiency very much.

257. You have said that two Vice-Chancellors, with the Master of the Rolls, could do the work, but that they would be very hardly worked. Supposing a

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third Vice-Chancellor were appointed, with a similar staff, would they be fully adequate to deal, not only with the arrears of the Incumbered Estates Court, but the accruing business, supposing it were confined to the incumbered estates?—I think they would be quite adequate.

258. Then it is your opinion that three Judges would be ample to deal with the business as fast as it was ready for working?—I should be disposed to think so.

259. In regard to the present arrears, has any of it been occasioned by the difficulty of procuring the taxation of Chancery costs?—A great many cases remain unfinished, and therefore appear in the shape of arrears in the returns, on account of the non-taxation of Chancery costs.

260. The funds cannot be paid out until the costs be taxed?—No.

261. Mr. *Whiteside.*] Is Mr. Longfield, the brother of one of the Commissioners, largely practising before your court?—Yes; he practises in the court.

262. At page 50 of the Appendix to the Report, Mr. Longfield says, "I am confident that if the powers of the Incumbered Estates Commissioners were transferred to the Masters in Chancery, they would be unable to perform the duties of Commissioners in addition to their other business; it seems to me that the Masters generally have as much business as they can efficiently and expeditiously discharge; there is every probability of a yearly increase in their ordinary business as the prosperity of the country revives and improves, and I have very little doubt that the business of any one of the Commissioners, divided amongst the present Masters, would bring them in all the offices to a stand." What is your opinion of that statement of Mr. Longfield's?—He rather means that that class of business is not such as that which has been hitherto done by the Masters.

263. *Chairman.*] The Master would have no suitable staff to enable him to do such business; there are cases, in the present state of the business of your court, which appear as arrears, by reason of the non-taxation of the costs?—Yes.

264. If once those costs were taxed, the funds would be paid immediately?—Immediately.

265. Does it arise from the parties themselves not being ready with either a certificate of searches, or not wishing to press forward their cases?—If you apply the doctrine of arrears to individual cases, that is so; individual cases fall into arrear also from the neglect or inattention of the solicitor, and partly, no doubt, because the Commissioners are fully employed by their taking up other cases.

266. But still individual cases of arrear occur in your court, either from the unwillingness of parties to proceed, or from delay upon their part?—Yes, there are a considerable number of cases in which the parties do not desire to proceed; they have got a petition filed, and an order made so as to protect themselves from Chancery proceedings, or they are able to pay the interest upon the demands, and the creditors do not press for a sale. We rather disapprove of that, and discourage it, but we cannot check it altogether.

267. Mr. *S. Fitzgerald.*] The Solicitor-general put a question to you, whether two Vice-Chancellors would be well able to perform the duty which is now performed by the Incumbered Estates Commissioners, because a good deal of your time is taken up by hearing appeals from the orders of the Commissioners?—Yes, and attending the sales.

268. If this business is to be transferred to the Court of Chancery, would not the appeals from the orders of the Vice-Chancellors have to be heard by the Chancellor in the first instance?—I think, under the suggested change, they are to be heard by what is called the Court of Appeal in Chancery, and not by the Chancellor individually.

269. Then it would form a necessary part of the reform proposed by the Solicitor-general, that a special court should be established to hear appeals from the orders of the Vice-Chancellors?—I do not think that is a necessary part of the proposal, because the appeals might be very well made to the Chancellor alone. I suppose it is considered to be more satisfactory to have a court of appeal consisting of two or more persons.

270. If the appeals were given to the Lord Chancellor, would he not then have to perform all his duties with reference to appeals from the Court of Chancery which he has now to perform, and also as regards the appeals which

are

are now found to embarrass your court?—He would have both classes of appeals to hear.

271. Do you think it would be possible for the Lord Chancellor, with his time already fully taken up, to transact that business?—I am disposed to think it would. It is difficult to say what amount of appeal business there will be; that will depend upon how the business is transacted. If the business is transacted in the court reasonably well, the number of appeals will not be very large.

272. Is not the appeal business from the orders of single Commissioners already sufficient to embarrass your court, and cause arrears of business to a certain extent?—It causes us to sit in full court during certain days in the week, and of course takes us away to that extent from chambers.

273. As regards the transfer of the jurisdiction of the Incumbered Estates Court to the Court of Chancery, I understood you to say that you would recommend the change, provided that you were assured that the new Vice-Chancellors would not neglect the ministerial part of their business, which you considered so important, and attend principally to their judicial duties?—I think that would be the thing to be guarded against principally.

274. If you saw any danger of their paying attention rather to the judicial business than to the ministerial business, you would not recommend the transfer?—I should be very slow to recommend it if I thought there was any fear of that.

275. You are aware that the new Vice-Chancellors proposed by this Bill are not only to have the business of the Incumbered Estates Court, but also they are to perform the ordinary duties of Vice-Chancellors of the Court of Chancery?—Yes.

276. Do not you think if they have to perform the duties of Judges of the Court of Chancery as well as the duties of Incumbered Estates Commissioners, that there would be great danger of their being so occupied with the judicial duties of their station as Judges of the Court of Chancery, that they would not be able satisfactorily to attend to the ministerial duties of their station as Incumbered Estates Commissioners?—The business might be so large as to produce that consequence; in that case it should be remedied by an increase of Vice-Chancellors, rather than by an increase of subordinate officers.

277. Do you consider it possible if this reform is carried out, that the two Vice-Chancellors would not be sufficient?—That might be possible; the business of the Incumbered Estates Court is, so far as relates to any estimate of its amount, at present entirely *in nubibus*; it might be so large as to render the appointment of another Vice-Chancellor imperative.

278. Mr. *E. Ellice.*] You have stated that if it should be found that the two Vice-Chancellors proposed to be created by the Bill are not sufficient to discharge all the accumulation of business thrown upon them by the transfer of the business of the Incumbered Estates Court, as well as the new business which it is proposed to commit to them under the provisions of the Bill, a third Vice-Chancellor might be created; are you not of opinion that it will be very inconvenient to create a permanent establishment of so extensive a character merely to meet a temporary pressure?—I am assuming the pressure to have been ascertained not to be a temporary pressure; that the business has already proved to be so great that the reasonable inference is that two would not be sufficient to do it; in that case, I suggest the remedy would be to appoint another Vice-Chancellor, rather than indirectly to get rid of the difficulty by increasing the number of chief clerks.

279. Is not the business conducted before the Estates Court of a temporary character?—No, I think not.

280. Do you suppose that the same amount of incumbrances, affecting landed estates in Ireland, will exist after the enormous amount of business which has been brought before the Incumbered Estates Court is disposed of?—I think there will always be a large quantity of business of that sort remaining to be done.

281. But to the extent to which it has already come before the Incumbered Estates Commissioners?—To the extent at least of the business now coming before us; not probably to the extent to which it came before us for the first three or four years.

282. Will not the proposal of allowing unincumbered proprietors to get a Parliamentary title before the Court of Chancery diminish that amount of business hereafter?—I should think not.

283. Will not the difficulty with respect to titles be much less?—I think the facilities

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facilities for sale will be so great, that in all probability there will be a much greater commerce in land than now takes place.

284. It is your opinion that the same amount of business will come before the Court of Chancery, which has for a few years come before the Incumbered Estates Court and the Court of Chancery together?—I think so.

285. Mr. *S. Fitzgerald.*] Admitting the objection which you feel to the appointment of Vice-Chancellors, if they are likely to attend to the judicial rather than to the ministerial part of their business, which you consider so important, do you consider it would be wise to give the Vice-Chancellors, who are to fulfil the duties of Incumbered Estates Commissioners, all the business in relation to wills and settlements, and winding-up joint-stock companies, granting injunctions, and things of that kind?—I think that necessarily follows if you combine the two courts; I do not know that it would be an advantage, as regards the power of getting through business.

286. It may be a necessary consequence; would such a consequence be objectionable?—I do not think it would be in any way fatal; I do not think it would be an advantage that the Vice-Chancellor should have a large amount of judicial business; I think it might rather tend to draw away his mind from the proper discharge of the administrative business.

287. Would it not be objectionable, as tending to produce that very state of things which you consider undesirable?—That is the objection, such as it is, which I conceive exists to the transfer.

288. With regard to the transfer of the jurisdiction to the Court of Chancery, I observe that the Commissioners, in page 6 of the Appendix, say that one great advantage is, "The facilities with which applications may be made to the Commissioners, and information obtained without expense from them or their examiners as to what has been done or is likely to be done in each case; this enables any claimant on the estate to intervene at the exact period when his rights ought to be brought forward, and from time to time to see that the proceedings are conducted in a satisfactory manner. The publicity and comparative rapidity of the proceedings tend to the same end. We consider that the power of obtaining a Parliamentary title can hardly be exercised with safety except through a system which gives to every person ready means for learning without expense, and without the possession of special professional experience, the nature of the proceedings in each case." If you establish high officers, such as Vice-Chancellors, who are to execute not only the duties of the Incumbered Estates Commissioners, but also to be superior Judges of the Court of Chancery, do you not think that the facility of making applications to the Judges themselves without professional assistance would be very greatly curtailed?—I think it ought not to be curtailed.

289. Do you think the facilities afforded to suitors of making personal applications to the Judges without professional assistance would not be greatly curtailed?—It would not necessarily be greatly curtailed.

290. Would it not be likely to be curtailed?—I do not know any reason why it should be curtailed.

291. Do you think it is as likely that a suitor, without professional assistance, would make a direct personal application to the Lord Chancellor as to an Incumbered Estates Commissioner in his chamber?—I think he could, if the Lord Chancellor were sitting in chambers, transacting administrative business.

292. You have made particular reference to sitting in chambers; I believe that in the Incumbered Estates Court it is not necessary, even in the full court, to have the assistance of counsel?—The rule before the full court is exactly the same as in all courts, that a party may appear personally if he likes; but ordinarily he appears by counsel.

293. He may appear in person?—He may in any court of justice.

294. Is it not the case in the Court of Chancery that there would be preaudience for counsel?—I do not know how that is. I believe, in Ireland, all motions are listed.

295. Mr. *E. Ellice.*] Before the individual Commissioners a very large quantity of business is transacted by solicitors; could that business be equally transacted by solicitors in the Court of Chancery before the Vice-Chancellors?—Yes, sitting in chambers.

296. Not in court?—Not in court.

297. Mr. *Whiteside.*] I collect from your evidence that a great quantity of important business is administrative business?—A very large quantity indeed.

298. The two Vice-Chancellors are to do the administrative business; besides whatever judicial business belongs to the Incumbered Estates Court and the judicial business of the Court of Chancery. When they are doing that administrative business, which you rightly describe as so important, what is to become of the judicial business of the court?—They would not be so much engaged in doing it themselves as by their chief clerks; it would, however, require careful looking after.

299. While they are carefully looking after the administrative business out of court, affecting so much property, what is to become of that business, which now requires the Master of the Rolls to transact, the business he now has to do, without any business from your court?—I consider we are proceeding all along upon the assumption, that the Vice-Chancellors will be either sufficient for the business, or made sufficient by a proper number of them being appointed.

300. Are you aware that by the statistics of the Court of Chancery it is proved that in exact proportion to any reform in the court in the cheapness or speed of transacting business, that the business increases?—I think so; cheapness and speed tend to increase business.

301. Is not the Master of the Rolls at this moment hard worked?—He is not half so hard worked as he was three years ago.

302. Assuming that he speaks accurately, he tells me that he has a week's chamber business in settling and drawing the orders of the court. I want to know from you, in reference to this important question of transferring the business of the Incumbered Estates Court to the Court of Chancery, how is it possible for the Master of the Rolls to transact any portion of that additional business if he be occupied in the way I have described?—I presume the business would go after some species of rotation to the different Judges.

303. Sir *E. Perry.*] Do not the Vice-Chancellors in England conduct judicial and administrative business under the New Procedure Act?—No doubt.

304. *Chairman.*] How many Masters were there in the English court?—I think about 11.

305. Do you know that by the addition of one Vice-Chancellor to the English Court of Chancery, all the business which was done by 11 or 12 Masters is done by the Vice-Chancellor; all the accruing business (I am not talking now of the arrears of the court) is done more rapidly, more satisfactorily, and more efficiently, by one additional Vice-Chancellor, than by the whole court with its 11 or 12 Masters?—I have not the slightest doubt that it is so.

306. Sir *J. Graham.*] Have you given your attention to the change which has taken place in England, with reference to the abolition of Masters in Chancery?—I have not had any opportunity personally of seeing the results.

307. Are you aware that the business now is transacted by the Judge from the very commencement of the cause to its close?—Yes.

308. You are also aware that the administrative business is transacted under the superintendence of the Judge by his chief clerk?—Yes.

309. Do you think it would be satisfactory to the Judge, you having had judicial experience, that the chief clerk, who is both his eye and hand, should be appointed by the Lord Lieutenant, and not chosen by himself?—In the abstract I should say that the chief clerks ought to be chosen by the Judge himself; it might be, perhaps, proper, with a view to checking any tendency to make improper appointments, to leave a veto with the Lord Lieutenant; it might be still better to require that the qualifications of the person appointed should be specifically stated, so as to be capable of being inquired into.

310. Mr. *Whiteside.*] Are you aware whether that rule in England was acted upon, of the Judge appointing his officers?—I think it was, with this exception, that they were obliged to take the then existing Masters' clerks, or most of them.

311. Are you aware that since the passing of the Act, commonly known in Ireland as Sir John Romilly's Act, that the four Masters we now have, excluding the Receiver-master, are in effect Vice-Chancellors?—They are *quoad*, what is called, the 15th Section business.

312. Therefore they are doing the business of the Vice-Chancellors; are you able to tell the Committee the state of business in Master Henn or Master Lytton's office?—I do not know anything of the state of that business; I have every reason to believe that that class of business is very well done.

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313. You cannot state the condition of the business?—No.

314. With respect to the question whether it will be expedient to transfer the existing business of the Incumbered Estates Court to the Court of Chancery, did I correctly understand you to say that in so far as respects the increase which may arise from the transfer of unincumbered estates, you can give the Committee no evidence of what that will be?—Nothing but conjectural evidence.

315. You can give no information upon that subject, what it is likely to be?—I cannot form much idea of it.

316. Am I to understand you to say that wherever there is no litigation, and where the business was *ex parte*, your difficulties increased?—What I meant was, that in every case there is a particular portion of business of a non-litigatory character.

317. That business imposes most trouble and labour upon the Judge?—It is not the trouble and labour that I have in view, so much as the extreme responsibility which it imposes upon the Judge.

318. In the sale of unincumbered property, where there would be no question in litigation between the owner and the purchaser, would it not partake of that non-litigatory character?—It would be exactly the same in relation to that kind of property as in relation to incumbered estates upon this particular point.

319. It would increase the labour of the Judge?—The circumstance of the estate being unincumbered would not increase the labour; it would be exactly the same.

320. Therefore if a large quantity of that business were imposed upon those two officers, in addition to their other work, would it not increase the amount of responsibility which devolves upon them?—It would.

321. *Chairman.*] Is there not a considerable portion of what are called the arrears of your court of such a character that it might be worked out by the Masters in the Court of Chancery?—It might no doubt be worked out by them.

322. If there were a clause in the Bill authorising the Chancellor to retain the services of four Masters to assist in disposing of that arrear, would not that facilitate the arrangement?—It would a little. I think, however, that the mere transfer of business from one man to another would rather tend to increase the quantity of business to be done.

323. Would it not facilitate the proceedings of the new Judges?—It must necessarily have that effect.

324. Mr. *S. Fitzgerald.*] Would not that be introducing into the administration of some of the causes, in the middle of the cause, a Judge who had no knowledge of it from its commencement?—That would be so.

325. *Chairman.*] There is a large class of cases in which the Commissioners have made an order for sale; the estate has been sold, and the fund has been brought into court; take the portion of the arrears represented by that class, in which you have not investigated the position of the incumbrancers, but merely sold the estate, and brought the money into court; is there any objection to the Masters taking up the business at that stage of the proceeding, to distribute that fund, the rights to which you had not yet investigated?—I do not think there can be any serious objection to that; probably the suitors would not like it.

326. Would not they have, in going through that business, entirely the same class of questions of which they are disposing each day?—Precisely; the business would be of the same character as that which they ordinarily have before them.

327. I will repeat the question which I asked you at the commencement of your examination, whether your court would be able to give the Committee an approximation to the business represented by that class of cases in which the estate has been sold, and the fund has been brought into court?—Yes; confining it to those cases in which scarcely anything has been done to ascertain the demands.

328. That would remove the objection, which has been properly pointed out, to the introduction of a new Judge into a case; that Judge being ignorant of the details?—I think that can be done, and it would relieve the Vice-Chancellors very much.

329. Sir *E. Perry.*] Whichever system is adopted, the arrears now existing must form an obstacle to the despatch of other business?—They must form an obstacle to the extent of the time which is involved in doing them.

330. I understand you to say, if the present court is continued, it would take about

about three years to get a sale upon a fresh petition?—I said that in a difficult case it might take three years.

331. What length of time would it take if there were no arrears?—Perhaps half that time.

332. It being quite clear that the arrears are an obstacle to the despatch of business, whatever system is adopted, has any mode occurred to you as to getting rid of those arrears?—There is no other mode of getting rid of them than by going through them in the ordinary mode of business.

333. I gather from your evidence that the Commissioners are able to keep down the business as it accrues annually?—I think we just now do about as much business as comes in.

334. Therefore the arrears are standing still?—If they are to be called arrears.

335. Sir *J. Graham.*] The statement of the Commissioners is, "that the amount of the business was originally so great, and the staff employed so inadequate, as to cause the existing arrear;" is it your opinion that the staff which you have had, has all along been insufficient?—At first it was grossly insufficient, because it was not at that time known what extent of business would come. I suppose that five times the amount of business came into court more than was imagined. At first the staff was most grievously insufficient; I think we are able now to do the business as fast as it comes in.

336. Dealing only with the incumbered estates, and the obligations respecting those incumbered estates?—Yes.

337. A transfer is now proposed of the arrears of business not completed to the extent which you mention, coupled also with a proposal to bring within the jurisdiction unincumbered estates and settled estates?—Yes, that is proposed.

338. Therefore must not provision be made, not only for the business begun, but not completed, but for business, as you termed it, *in nubibus*, which is so extensive that you cannot estimate what it will be?—When I say *in nubibus*, I do not mean to imply that it must be very extensive; but that it is a point upon which we cannot judge, whether it will be large or small; it may be a mere nothing; we have no data upon which to form an estimate.

339. When you consider the circumstances which you have stated, that the value of an incumbered estate, on account of the Parliamentary title acquired by its sale, is greater in Ireland than of an unincumbered estate with the absence of the Parliamentary title, must not the sale of all land in Ireland, whether incumbered or unincumbered, come under the jurisdiction of the court necessarily?—Persons would not sell their estates merely to get a Parliamentary title if they were obliged actually to make a *bonâ fide* sale; they would not sell unless their own convenience or the requirements of their families rendered it a convenient course.

340. Also bearing in mind the tendency of that policy to bring land more into the market?—That is the reason why I think it will be a constantly increasing business.

341. Mr. *E. Ellice.*] If parties wish to borrow money in Ireland, and the lenders of that money preferred a Parliamentary title, they would merely pass their estates through the court to obtain that title, without a *bonâ fide* sale?—I think that should, either by the practice of the court, or by Act of Parliament, be checked; I think it would be very dangerous.

342. Mr. *S. Fitzgerald.*] You would give the power of obtaining a Parliamentary title only where there was a *bonâ fide* sale?—I would endeavour to limit it to that as much as possible.

343. Mr. *E. Ellice.*] Will you state to the Committee, having had great experience upon this subject, what your opinion is with respect to the principle of giving to the unincumbered proprietors in Ireland the power of obtaining in the Court of Chancery without sale, a Parliamentary title, as is proposed by the Bill?—I should be completely hostile to everything of that sort; I think it would lead to great frauds.

344. Would your objection equally attach to an unincumbered proprietor proceeding to obtain a sale, through the Court of Chancery, of his estate?—No; I think the objection would not attach to anything like the same extent, if he was really proceeding to a *bonâ fide* sale.

345. You would be of opinion that it would be a fit principle to adopt in legislation, to give an unincumbered proprietor in Ireland the power of obtaining

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a Parliamentary title by a sale through the Court of Chancery?—I think on the whole it would, having regard to the great public advantages which accrue from making sales of land in Ireland very cheap and easy.

346. Sir *J. Graham.*] Must not the obtaining of those advantages involve a vast increase of business?—Some increase of business, no doubt.

347. Taking the business to be transferred commenced, but not concluded in the Incumbered Estates Court, and your estimate of the large increase of business in the sale of unincumbered property, if it be allowed, the four Masters being abolished, and two Vice-Chancellors being appointed, and there being a considerable transfer of the causes which are now heard by the Lord Chancellor to the Vice-Chancellors, can you really contemplate that it would be possible, without throwing the whole business of the court of equity in Ireland into inextricable confusion, to make that transfer?—I think it would be found necessary beforehand to increase the efficiency of the staff; the best way will be for the Committee to ascertain as nearly as they can the amount of business, and constitute such a number of judges as would be able to do it.

348. The only portion ascertained is the arrears of your court; the other ingredient would be the probable increase in the sales of estates from the proposed power to sell unincumbered estates. The tendency of your evidence as I understand it, is, that you believe, from the convenience of it, there would be a large increase of business?—I do not think there would be immediately a large increase; but I think it would gradually go on increasing to a very large amount.

349. Mr. *E. Ellice.*] You have stated that you consider the Incumbered Estates Court as at present constituted, with the staff at its disposal, is only sufficient now to discharge the current business as it comes in, without overtaking the arrears?—I think that is about what we are now doing; I think we are carrying on the business without accumulation.

350. If that be so, if with the present staff, consisting of three judges, that is, the constant attendance of two judges, and the attendance, such as he is able to give, of Mr. Baron Richards as the third judge, you are only able now to manage to keep down the current business in the office, how do you suppose that two judges in the Court of Chancery will be able to manage business comprising the whole of the arrears of business from your court, and the new business which it is proposed to throw upon the Court of Chancery under this Bill?—I think a judge with two very competent chief clerks, and two junior clerks, able to do their business well, would be a very much more effective officer than a single commissioner with a single examiner. I think he could do twice as much business as the single commissioner with his single examiner.

351. Mr. *Whiteside.*] I believe Mr. Baron Richards never goes the circuit, in order that he may attend your court?—No.

352. Sir *J. Graham.*] Do you contemplate the active and constant control of the judge himself over all the business transacted by his chief clerks and second clerks?—I think he should exercise a constant superintendence over it, and everything done should be considered as being done through the judge himself.

353. Mr. *Whiteside.*] Is he to read the abstract of title?—I think so.

354. *Chairman.*] You think he should not delegate that duty?—He may have assistance by having it noted by his chief clerk, or having the opinion of counsel upon it; but I think it is indispensable that the judge should read the abstract of title.

355. Sir *J. Graham.*] Taking into consideration the arrears of business, your plan of dealing with unincumbered and settled estates, and the necessity of reading the abstract of title, with your experience and knowledge, do you think that business could be done by the Master of the Rolls and two Vice-Chancellors?—I think with the great advantages which they would possess in their staff, they would be able to do a great deal of it; it is impossible to say beforehand whether it would be necessary to appoint three Vice-Chancellors.

356. Sir *E. Perry.*] If the business increases in the manner contemplated, which seems very probable, would it not be necessary to increase the number of Commissioners, if the Incumbered Estates Court is made permanent?—It will be necessary either to do that, or to strengthen the personal staff of the Commissioners very much.

357. I mean if the unincumbered estates come very largely into the court?—

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With regard to the sales of the unincumbered estates, almost the whole of that business would be administrative; reading the abstract of title is then the most essential part of all the business.

358. Sir *J. Graham.*] Are not unincumbered estates in Ireland very generally settled estates?—The tendency to make settlements is much greater in Ireland than in England; if a man has a farm, he puts it in settlement immediately.

359. Unincumbered estates in Ireland are generally settled estates?—I think so, very often.

360. If you permit the sale of unincumbered estates, will it not require the utmost caution and the utmost attention on the part of the judge to look accurately into the settlements, before he permits the sale of any portion of an unincumbered estate?—That would be essential; the settlement would constitute part of the proof of the title to the property. I do not think it is contemplated, under all circumstances, to permit the sale of an unincumbered estate which is settled, but simply where the court considers that the sale would be very desirable for some special reason. Where the estate is in settlement, and not incumbered, I take it the court would not ordinarily sell under the Solicitor-General's Bill. The court has not at present the power to sell in such a case; but the power is conferred by that part of the Bill called Sales of Settled Estates. The intention is not to confer a right on any one to demand a sale, as in the case of incumbered estates, or of unsettled estates, whether incumbered or not, but to repose a discretion in the court, where there is a special reason that a sale should take place, and where the estate would suffer grievously in consequence of the absence of a power of sale.

361. Is not that a case of great nicety?—It requires a man of great common sense to deal with it.

362. Mr. *E. Ellice.*] Are not the settlements of landed estates generally registered in Ireland?—Nearly all deeds relating to estates are registered as a matter of course. Perhaps on this part of the subject I might be allowed to suggest to the Solicitor-General that he has introduced into his Bill a branch which does not bear upon this question at all, and that has nothing at all to do with the question of the jurisdiction of the Court of Chancery or the Incumbered Estates Court. Putting that portion of the Bill out of the question, then you may say that a settled estate unincumbered cannot be sold in Chancery.

363. Mr. *Whiteside.*] You have been asked as to the capacity which you have to clear off the accruing business. Supposing you were relieved of all the new cases, with your present staff what time would it take you to clear off the existing business of the Incumbered Estates Court?—I think it would probably take from three to four years, nearer four years than three, to clear it all off; but during the latter part of those years there would be only half work.

364. Mr. *Henley.*] You have been asked your opinion as to giving Parliamentary title in the case of the sale of an unincumbered estate, and in the case of an estate about to be incumbered; what would your opinion be as to giving a Parliamentary title in the event of a person being about to settle an estate?—I would not permit it in such a case as that, any more than in the event of putting incumbrances upon the estate. I would only permit it in case the owner meant *bonâ fide* to sell to another family.

365. If the law did permit it in the event of settlement, as in the case of incumbrance, then that would bring another great increase of business; that is, if A. wished to settle an estate upon his son's marriage, and before settling it he wished to get a Parliamentary title, and he carried it into the court that could give him a Parliamentary title previously to the settlement, that would make a very important increase of business, would it not?—If it were permitted, it would imply a considerable increase. I am not aware that in any of the Bills before the Committee anything of that sort is suggested.

366. Mr. *Grogan.*] You say that it would take three or four years to clear off the existing amount of arrears in your court, supposing that no new business was brought into it; supposing the staff of Commissioners was increased by the addition of a second examiner to each Commissioner, and two chief clerks, what length of time would you require to work off the existing arrears?—I do not think it would make much difference in working off the arrears merely; the parties would not like to press the cases. I think with our present staff, if we took the arrears, and no new business was coming, we could do it as fast as the parties wanted us to do it.

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367. Is it your impression that what we have designated arrears, is a kind of almond rod, which must always exist in your court?—It is a quantity of business in court, some of which is in its natural and regular stage of progress, and some of which the parties have no object in pressing to an immediate conclusion.

368. *Chairman.*] Supposing the existing business to be kept out of view, do you think the new Court of Chancery, constituted as is contemplated by this Bill, as far as you can form a judgment, would be able to dispose of all the in-coming business arising from the sale of estates, whether incumbered or unincumbered?—I am disposed to think it would, unless it should turn out that the unincumbered business was much greater than was anticipated.

369. Forming the best judgment from your knowledge of the country during the last six or seven years, what is your view?—If I were legislating upon the subject, I should provide very much as you have done, namely, by the appointment of two Vice-Chancellors.

370. Mr. *E. Ellice.*] In giving that answer, do you recollect that it is proposed, in giving additional clerks to the new Vice-Chancellors, to abolish all the Masters in Chancery?—Yes, that is most important.

371. Will not the abolition of those offices also throw upon the new Vice-Chancellors a great deal of additional labour?—It would throw a great deal of additional labour upon the Vice-Chancellors and the chief clerks; but I consider a Vice-Chancellor, with his chief clerks, would be a far more efficient functionary than all the Masters put together.

372. You are still of opinion that the two Vice-Chancellors, with the clerks appointed to assist them, would be sufficient to do the business of the court?—That is the staff which I should provide in the first instance; I should leave myself open to increase the staff, if more were required.

373. You are aware that the whole business of Great Britain is now transacted in the Court of Chancery by the Master of the Rolls and three Vice-Chancellors?—Yes.

374. Do you think a staff of that description would be absolutely necessary to conduct the business of Ireland?—Yes, if you introduce all this kind of business, which does not exist in England at all, namely, the sale of incumbered estates, and the sale of unincumbered estates too.

375. Is there not an immense amount of business thrown upon the English Court of Chancery?—The general business of the Court of Chancery in England is immensely larger than in Ireland.

376. If it is immensely larger in England, do you think the same amount of permanent establishment would be necessary to conduct the business in Ireland?—I think about the same. I think the Master of the Rolls and the two Vice-Chancellors would be the best number to begin with, for although the general business of the Court of Chancery in England is very much larger than in the Court of Chancery in Ireland, there will be nearly as much business in Ireland as in England, when you add the incumbered and unincumbered estates business.

377. Is there not almost an equal amount of incumbered estates business now transacted through the Court of Chancery in England; not in receivers?—No, not nearly.

378. Mr. *Whiteside.*] Are you aware of the number of receivers attached to each Master, irrespective of the 1,000 or 1,100 receivers before the Receivers Master?—No, I am not aware.

379. Is not the Master obliged to examine the receivers' accounts and to superintend the entire working and managing of the estates by the receivers?—The Receivers Master does that.

380. Are you not aware that besides what the Receivers Master has to do, each of the other Masters has 300 to 400 receivers?—No; I am not aware how that is.

381. Do you see any objection to assimilating the law as to the appoinment of receivers in Ireland to the law in relation to the appointment of receivers in England?—It would be making a very violent change in the law; it has become so much the habit in Ireland now to secure the interest of demands by means of receivers, that I think it would be making too violent a change.

382. In a country governed by the same law as England, why should not, in reference to this important subject of receivers, the same law apply to each country?

country?—I think the tendency of such a step would be to diminish the quantity of estates under receivers, which perhaps would be one of the greatest blessings which could happen to the country; but that object will be better effected by facilitating sales. *G. J. Hargreave, Esq.* 6 March 1856.

383. Sir *J. Graham.*] Can you state to what extent the operation of the Incumbered Estates Court has diminished the number of receivers?—No; you may assume that over almost every estate which we have sold there was, or soon would have been, a receiver, with very few exceptions.

384. Is there not a difference in the law of England and the law of Ireland with regard to judgment creditors?—There are minor differences.

385. Have not judgment creditors in Ireland the power of appointing receivers?—Yes.

386. No such power exists in England, does it?—Not directly; a judgment creditor in England becomes an incumbrancer, and in that way he can get a receiver, pending the sale.

Lunæ, 10° *die Martii*, 1856.

MEMBERS PRESENT.

Mr. Solicitor General for Ireland.	Mr. De Vere.
Sir James Graham.	Mr. Walpole.
Mr. Edward Ellice.	Viscount Monck.
Mr. Whiteside.	Mr. Seymour Fitzgerald.
Mr. Kirk.	Mr. Grogan.
Sir Erskine Perry.	

MR. SOLICITOR-GENERAL FOR IRELAND, IN THE CHAIR.

Charles James Hargreave, Esq., called in; and further Examined.

387. Sir *J. Graham.*] IN the administrative portion of the functions of the Commissioners of the Incumbered Estates Court, as well as in the judicial portion of their functions, they do not act individually, do they?—In the administrative portion of their functions they do act individually. *C. J. Hargreave, Esq.* 10 March 1856.

388. Does Mr. Longfield act separately?—I sit in one chamber; it is an open court, although called nominally a chamber. Mr. Longfield sits in another; and the Chief Commissioner sits in another. We know nothing at all of each others' cases until an appeal or some proceeding of that nature comes before all the Commissioners.

389. Then there is that division of work to be done amongst the different Commissioners which enables them, for the purposes of all but their judicial functions, to act separately; as relates to the investigation of title and all the preliminaries before the sale is ordered, is that business divided amongst the different Commissioners, or do they act together?—That business is divided amongst the different Commissioners.

390. Therefore whatever work remains to be done, that arrear has arisen in spite of the division of business amongst the three Commissioners?—It has, if there be any such arrear as is now mentioned.

391. The existing accumulation of business remaining undone, has arisen notwithstanding the division among the three Commissioners?—It has.

392. Mr. *Whiteside.*] Do not you make most important orders in chambers, disposing of considerable interests?—We do; the great mass of the general business is done in chambers; it is only cases in which parties are dissatisfied with the Commissioners' decision that come before the full Court.

393. Sir *J. Graham.*] What aid have you in chambers, similar to that which, under this Bill, will be given to the Vice-Chancellor in the shape of chief clerks and junior clerks?—We have only one examiner and the examiner's clerk; the examiner has 400*l.* a year, and the clerk has, I think, 150*l.*

394. If you had such aid as is contemplated by this Bill, or such aid as is given to the Vice-Chancellors in England under the new arrangement, would

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your power of separately transacting business be much increased?—I think it would be very much increased, indeed; I should think it would be almost doubled.

395. How is it that your present staff retards your operations, compared with the facilities which would be given by a staff such as is contemplated here for the Vice-Chancellors?—Principally because the staff is not sufficient to do all the business which, under this Bill, would naturally devolve upon the chief clerks; also the chief clerks, under this Bill, would be persons, I should suppose, of rather a higher class professionally.

396. You think if the minor details which you transfer to your subordinates could be transferred under a new arrangement, to more efficient and more numerous subordinates; you could control satisfactorily to yourself a larger quantity of the more important business which you now transact, such as the inspection of titles?—Yes, I think so.

397. You are not fully employed in the most important functions of your office, but you are forced to descend to details, from the insufficiency of the number of your subordinates; is that so?—Yes; I think that is a correct representation.

398. *Chairman.*] Excluding for a moment the examination of titles, but with that exception, could the great mass of the administrative business which you are now obliged to do, be done under your direction, by two or more chief clerks, as is pointed out by the Bill now before the Committee?—I think it could be done to a much greater extent, and more efficiently than we are able to do it now.

399. Doing it always under your own direction?—Yes.

400. Sir *J. Graham.*] You being responsible, do you think it would be satisfactorily done by a larger staff of subordinates?—I think it would if the Judge exercised a superintendence over the whole business.

401. I am assuming that the Vice-Chancellors, under the proposed arrangement, are to exercise that control, and to do their duty efficiently?—Yes.

402. Mr. *E. Ellice.*] In short, a much greater quantity of business could be done equally expeditiously, and equally correctly, if another superior clerk were added to your present establishment, in your opinion?—No doubt a good deal more business then would be done if a superior clerk were attached to each Commissioner.

403. Sir *J. Graham.*] With your knowledge of the business which would have to be transferred under such an arrangement as is contemplated, should you say that barristers or solicitors would be the most efficient assistants for first clerks?—For first clerks, I should be disposed to think that barristers would be the most efficient persons.

404. Are you aware that in England, under the new arrangement with respect to Vice-Chancellors, there is no such qualification as that of a barrister?—I believe not; I think they must be either solicitors or persons who have previously filled the office of chief clerk.

405. It is contemplated in the Bill to make the qualification of a barrister six years, and of a solicitor ten years; do you think the greater aptitude of barristers for the duties to be performed, as compared with the aptitude of solicitors, justifies that distinction?—I am not disposed to approve of the qualification at all.

406. Will you state why you are not disposed to approve of any such qualification?—If the Judge is to be responsible for all that is done, I would allow him to exercise an uncontrolled discretion in the choice of the person to be appointed.

407. Taking either a barrister or a solicitor, whichever he should think most fitting for the duties, without reference to terms of service?—Yes, I think so.

408. *Chairman.*] You would leave the Judge at liberty to take his chief clerk from any class he pleased, getting the best man he could?—I should be disposed to do so. I take it for granted that he would select either a solicitor or a barrister; I cannot imagine it possible that he would select any other person.

409. As to the administrative duties which this chief clerk would assist you in, I presume you contemplate that the chief clerk would assist very mainly in framing what are called the final schedules of incumbrances?—That would be, I think, one of his functions.

410. And determining the priorities of creditors, subject always of course to your immediate direction?—I do not know exactly whether that would be one of the chief clerk's functions.

411. Supposing that was done under his directions, the duty would be a very serious one?—It would, certainly.

412. Would not that involve the necessity of the chief clerk being a man not only of

of a practical mind, but also possessing a considerable and accurate knowledge of the law?—I think he should have a considerable and accurate knowledge of the law.

413. Would a person, having an accurate knowledge of the law of real property, and the effect of incumbrances upon real property, filling the office of chief clerk, very materially aid the Judge in dealing with the various objections which the creditors might make in reference to their various priorities?—Yes; I think he would be able to give great assistance to the Judge in reference to the final disposal of the funds by the Judge.

414. Supposing you had as your chief clerk, what is commonly called a "hard-bitted conveyancing lawyer," do not you think, without relieving you in the slightest degree from responsibility, he could materially assist you in reading, noting, and making his commentary upon the abstract of title?—I think he could; that is one of the functions which the examiners at present exercise.

415. Assuming that a person, such as I have referred to, to be made a chief clerk, are there not two portions of your duty, which you could not with safety entrust to the chief clerk; that is, making the order of sale upon the petition, and also reading the abstract of title, to determine whether that abstract showed a good title or not?—I think, perhaps, the chief clerk might be entrusted with the power of making the conditional order for sale upon the petition. He would then have to determine, upon reading the petition, who were the proper persons to be served with notice.

416. You think the chief clerk might determine who ought to be served with notice?—I am disposed to think so; I do not say that I would necessarily entrust that duty to the chief clerk, if I were acting as a Vice-Chancellor.

417. Acting under your direction, you think he might be employed in such a duty?—I think so.

418. Would not that materially relieve the Judge from administrative labours?—No, I do not think that business presses at all heavily upon the Judges; it takes a certain amount of time; it is a kind of business which a Commissioner only does when he does not happen to have anything else pressing.

419. It is possible that the class of business to which I have referred might be so disposed of?—It is.

420. Would the amount of responsibility be great?—I will not say that the responsibility is not great; it is very important to determine who are the proper persons to be served with notice.

421. Sir *E. Perry.*] Is it not your opinion that the great value of the Incumbered Estates Court, is the administrative business being conducted by the Commissioners?—I think it is very important that the business of the Incumbered Estates Court should be conducted throughout by the same person; that he should attend to the administrative business himself, and transact all the judicial matters which would arise in the course of the business.

422. *Chairman.*] I understand your opinion to be, that the chief clerk might give material assistance in reading the petitions, determining whether a conditional order for sale ought to be made, who ought to be served with notice; and I further understand you to say that he might give most material assistance in reading and examining the abstract of title?—Yes.

423. In addition to that the chief clerk, supposing him to be a competent person, could do a great mass of the administrative business, which you are now obliged to do personally?—Yes, I think he could.

424. Putting all these together, do not you think the appointment of two chief clerks and two junior clerks, such as are recommended by the Report of the Commissioners, would relieve the Judge from a great amount of labour which he has at present to encounter, and enable him to get through a great deal more of that portion of his duty which may be called judicial, or which requires his own immediate attendance?—I think it would enable him to transact much more of his own peculiar business.

425. Sir *J. Graham.*] If incumbered estates are henceforth to be sold in Ireland, as under the operation of the existing law, and if unincumbered estates and settled estates are also to be sold, would not it be the paramount duty of the Judge to whom that power of sale is confided, in every case to examine the title himself?—According to my view, I think it will be the duty of the Judge himself to be satisfied that the title is a good one.

426. Would there not be great danger in delegating, even to a chief clerk, however competent, the investigation of the title?—I think there would be some

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danger in delegating the whole of that business to the chief clerk; I think the chief clerk might make notes upon the abstract of title, bringing before the Judge any point of difficulty which presented itself.

427. Mr. *Whiteside.*] I believe you have to read the deeds?—The examiner has to vouch, according to our practice, the abstract of title, with all the deeds.

428 You get the deeds themselves brought into court, do you not?—We do, wherever we can.

429. Mr. *Walpole.*] Does not the examiner perform the duties of a solicitor in that respect?—Yes, in that respect.

430. Sir *J. Graham.*] If the sales be as extensive as I have alluded to in a former question, will not really the whole conveyancing business of Ireland be concentrated in the equity Judges?—I think a very large proportion will; it is difficult to say what proportion of unincumbered estate business will devolve upon them.

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431. *Chairman.*] THE Incumbered Estates Act, the operation of which we are now to some extent inquiring into, I believe was brought into The House of Commons under your care?—That is so.

432. You have also acted as one of the Commissioners under a Royal Commission, which made its Report last year?—Yes.

433. Finding that the operation of the Act of 1849 had been very successful, the Commissioners, amongst other things, recommended that the system of the sale of estates giving a Parliamentary title should be made permanent, did not they?—Yes.

434. And furthermore that it should be enlarged, so as to give an unincumbered proprietor desiring *bonâ fide* to sell his estate, the same benefit of acquiring a Parliamentary title as is given to an incumbered proprietor?—Yes.

435. Might I ask, for the information of the Committee, if you could state concisely the grounds upon which you came to the conclusion that it would be desirable to give the benefit to an unincumbered proprietor which, under the Act of 1849, the owner of an incumbered estate had?—It appeared to me to be a perfect anomaly to consider that a person was entitled to that which is assumed to be a benefit, merely because by his own defects or the defects of his ancestors he had incumbered his estate, and that a person who had lived within his income, which is a merit, should be deprived of that advantage which was given to another person who was devoid of it. It has always appeared to me very desirable to make estates as clear as possible. Great legal expense is occasioned by difficulties in making out titles to land, and I think it is a very desirable thing to extend the advantage of diminishing that expense as much as possible. The reason why it was applied only to incumbered estates in Ireland was, that it was forced upon the Legislature, because the state of Ireland had become such that a dead lock had arisen with respect to many estates in that situation, and it was necessary to apply a remedy would remove the evil, and which seemed to many persons in the nature of a revolutionary remedy; but if it was found to work well, there seemed to be every reason for extending it to all sorts of estates.

436. I presume you were also influenced by the representation that in point of fact it was found, practically, that an unincumbered proprietor, indirectly, was enabled to sell his estate under the management of the Incumbered Estates Court?—Yes; in fact an unincumbered proprietor by creating a fictitious incumbrance obtained the means of getting the benefit of that which I think it very desirable that every proprietor should have the benefit of.

437. Was not it further represented that an incumbered estate in Ireland was more valuable than an unincumbered estate, that is to say, it produced a higher price in the market from the owner being able to sell and get a Parliamentary title?—That is to say, a Parliamentary title conferred some value upon an estate, that is what it amounts to, which, practically, I think has been established in Ireland, and would be undoubtedly the case everywhere.

438. Supposing there were a satisfactory tribunal established for the purpose of selling estates, with an efficient staff to conduct its business, can you suggest any reason, in principle, why the owner of an unincumbered estate should not have the benefit which the owner of an incumbered estate now has?—No; it appears to me that the principle ought to be the same in both cases. There is no reason, in principle or good sense, for making any distinction between them.

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439. One of the points upon which the Committee are very anxious to have the benefit of your judgment and experience, is in reference to the tribunal in which those powers should be invested, assuming that the right to sell an estate with a Parliamentary title is made permanent?—I concurred in the recommendation of the Commissioners, that the power should be transferred to the Court of Chancery; but I should be desirous to explain the grounds upon which I acceded to that view of the case. It appeared to me to be an unsound state of things, and one that could not really last, to have two tribunals in the same country, not branches of the same court, but concurrent jurisdictions carrying on exactly the same functions, and that it would be impossible, assuming that the Incumbered Estates Court were to have such functions as are necessary to enable it to carry on the sale of estates, giving Parliamentary titles, to distinguish it from the duties and functions which necessarily and properly belong to the Court of Chancery, and that it would be a very unsound state of things to have two tribunals going on in that state concurrently. I do not believe that practically that it would be found to be possible; the one would absorb the other. Therefore the question I had to consider in the Commission, and which I think was the question considered by several of my colleagues, was, whether it was desirable to give the Incumbered Estates Court all the functions and all the powers of the Court of Chancery, or to give the Court of Chancery all the functions and powers of the Incumbered Estates Court. Practically the result would be exactly the same; you might carry on the same operation and call it the Incumbered Estates Court, or call it the Court of Chancery; but if they practically administered the same law and performed the same functions, they would be under either name the same to all intents and purposes. It appeared to me to be better to preserve the name of the ancient tribunal, assuming always, which we considered a most essential thing, that there should be sufficient security in any measure which should be introduced, that the Court of Chancery, to which the functions of the Incumbered Estates Court might be transferred, would duly perform those functions in as satisfactory a manner as that in which they have hitherto been performed, and that security might be obtained for such performance for the future.

440. The security for the due performance of the duties, I presume, would be in the first place reforming the procedure in the Court of Chancery itself, assimilating it very much to the procedure of the Incumbered Estates Court, and taking care that the court was armed with competent judges and a sufficient staff?—Yes.

441. Sir *J. Graham.*] Will you allow me to call your attention to page 23 of the proceeding in the Report. You will there find the 14th recommendation made by the Commissioners. On that occasion there were present the Master of the Rolls, the Solicitor-general for Ireland, Mr. Brewster, Mr. Longfield, and Mr. Cairnes; the 14th recommendation is in these terms: "That the transfer of the powers of the Incumbered Estates Court to the Court of Chancery can only be recommended by the Commissioners, on a reasonable expectation that the present officers and staff of the Incumbered Estates Courts shall, so far as may be reasonable or necessary, be transferred to the Court of Chancery." That was the view which you originally took?—That was the view I took.

442. At the bottom of page 23 is the minute of a meeting in Ireland, at Dublin Castle: present, the Lord Chancellor, Chief Justice Monahan, Mr. Blackburne, the Solicitor-general, Mr. Brewster, and Mr. Longfield, at which that 14th resolution appears to have been struck out. Upon that reversal of your original view, was your opinion changed when you consented to sign the report, omitting that strong recommendation upon the entire transfer to the Court of Chancery?—Not in the slightest degree. When those gentlemen were obliging enough to attend at the Rolls House for the purpose of going through this matter, the 14th resolution was one of the resolutions which, I think, was proposed by myself, and there was no dissentient voice to that resolution, with one exception. Mr. Longfield objected, because, he said, being himself one of the Commissioners for the performance of the duties of the Incumbered Estates Court, he thought it would come with an ill grace from him to be a member of a Commission which recommended practically that one of those members should be transferred to a higher office, and accordingly he made some objection to it. According to my recollection, at that time I said that I could not concur in a report recommending the transfer of the duties and functions of

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the Incumbered Estates Court to the Court of Chancery unless I had a reasonable expectation that Mr. Longfield and Mr. Hargreave, and the gentlemen under them who had performed the functions in that court, were transferred to the Court of Chancery, to carry it into effect there. According to my recollection (the Solicitor-general of Ireland was present, and he will correct me if I state anything erroneously), Mr. Brewster interfered, and said he concurred entirely with me; he thought Mr. Longfield showed a false delicacy upon the subject. It was his deliberate opinion, as well as mine, that the transfer of the men was essential for the due performance of the functions to be transferred, the measure having been a difficult one originally to carry into effect; that unless you had persons who had done so, transferred to Chancery, you could not have a good security for its being duly performed. Thereupon Mr. Longfield said nothing more, and no other gentleman, I think, expressed any dissent, and the resolution was agreed to. When the minutes of the subsequent meeting in Dublin were transmitted to me, I did not notice that this resolution was struck out. Then the report came back to me with that passage omitted. I did not like to be the single dissentient person; I knew that Mr. Brewster had agreed with me; I knew that Mr. Cairns had agreed with me, and the Solicitor-general for Ireland had expressed no dissent, and therefore I thought it might be from some feeling of delicacy towards Mr. Longfield it was thought better to omit it. I did not think it proper upon that occasion to dissent from signing the report, or make a separate remonstrance upon the subject myself, but always intending to express my strong opinion upon that point, which the Solicitor-general for Ireland is aware I have expressed to him, and also to the Lord Chancellor for England.

443. Have you not watched the operation of this measure with natural anxiety, considering the part which you took in its introduction?—I have done so with great interest; with as much attention as I could.

444. Concurrently with the unanimous opinion of your fellow Commissioners, you state your opinion that the measure has worked well and satisfactorily?—Yes.

445. Individually, having watched the execution of the work by Mr. Longfield and Mr. Hargreave, are you satisfied that that work has been ably and well done?—I am satisfied that the work has been ably and well done. I have not seen, which I should have been interested in seeing, the reports of the decisions of the Incumbered Estates Commissioners, but I am informed by persons most competent to form an opinion, that their decisions have met with universal satisfaction, and that the appeals from them to the Privy Council have been extremely few, and that still fewer have been reversed.

446. You have already expressed an opinion, in a former part of your evidence, that the question presented itself to your mind as an alternative, either to give a permanent continuance to the Incumbered Estates Court, or to transfer its business to a reformed Court of Chancery; have you reflected upon the extent of work not yet wound up in the Incumbered Estates Court, which, if the transfer takes place, must go with the business of the Incumbered Estates Court over to the Court of Chancery; the number of cases not yet wound up is stated, at the top of page 13, as 1,633 cases, being nearly one-half of the entire number brought into the Incumbered Estates Court?—I am not very competent to speak upon the subject of the arrears in the Incumbered Estates Court without knowing more accurately of what they consist. It in many cases happens that large sums of money to be distributed do not constitute arrears. In a great number of cases there are large sums of money in the Court of Chancery which remain to be distributed, but which in no case ought to be called arrears; the money remains to be distributed undoubtedly, but they are cases, for instance, where the dividends are to be paid to a tenant for life, with a direction in the order that upon the death of the tenant for life the parties interested shall have liberty to apply; in that case the ultimate distribution is not ripe for decision. All those cases where the distribution of the fund is actually ripe for decision would constitute arrears, but of the extent to which that exists in this case I am unable to form an accurate opinion. Mr. Hargreave or Mr. Longfield could express a better opinion upon that subject than I am competent to do; nevertheless it is obvious, after all allowances, that there must be a considerable arrear.

447. Mr. *Whiteside.*] Are you aware that there are 1,300 cases in which nothing has been done?—The petitions for sales have been presented.

448. Mr.

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448. Mr. *Walpole.*] I will call your attention to two questions which were put to Mr. Hargreave upon this point. At question 196, Mr. Hargreave was asked by Sir James Graham, "The number of cases not yet worked is 1,633, being nearly one-half of the entire number brought into Court?" Mr. Hargreave says, "That implies that one-half of the number brought into Court are totally finished. With reference to the other half in course of being finished, it does not imply what proportion is finished or is not finished." Then he is asked, question 197, "But the measure which you would adduce of the quantum remaining to transact is the 400,000 *l.* a-year?" Mr. Hargreave's answer is, "The sale of properties to about that extent, and the distribution of funds now in court to be distributed." From that, it would appear that a great portion of the 1,633 cases might be partly finished, though not totally wound up; it would further appear, that the sale of estates, which have to take place, is represented by a rental of 400,000 *l.*, and not a larger rental than that sum; is not that so?—I have no doubt it is so; it is not a subject upon which I am able to form an accurate opinion; I only know what I see in the statements which are laid before me. This ought to be considered, that there would be, if you got rid of all the arrears, a certain per-centage of land in Ireland annually sold, as there is in every country; and that would be the regular standard business of the court, when all the arrears are disposed of; how much of that is properly arrear, and how much of it is the regular ordinary business, I am unable to form an opinion.

449. Sir *J. Graham.*] Assuming the arrears to be considerable, your opinion remains unchanged, that the alternative is either the permanent erection of this court into a standing tribunal in Ireland, or a transfer of its business to the Court of Chancery?—Yes.

450. In your opinion, the *ad interim* continuance of the Incumbered Estates Court merely to wind up the arrears would not be a desirable course?—No, I think that is objectionable; I never yet have seen any court or any tribunal which was merely continued for a temporary purpose, that worked well; I do not believe in the nature of things it is possible for it to work well; it is contrary to the ordinary principles of human nature, that persons should work well, who are only working up to a particular time; I believe you would find a great number of difficulties arise; business is slurred over, and done in a slovenly manner when persons are only working up to a certain point.

451. In the transaction of the business in the Incumbered Estates Court, more especially the judicial business, in which questions of equities between parties have to be decided, is there in your opinion sufficient training and experience for the general judicial business of the Court of Chancery?—I have had occasion to think upon this subject since I received notice to attend this Committee; but it is difficult in my opinion to conceive any question of equity which would come before the Court of Chancery, which would not come before the Commissioners of the Incumbered Estates Court in the distribution of the money. It is possible that some questions, which we have occasionally in the Court of Chancery upon charter parties, the freight of ships, and the like, which are very rare even with us, might not come before the Incumbered Estates Court, although it is not impossible that incidentally even those questions might arise, but there is no other question of equity which would not fairly arise in the distribution of the money arising from the sale of estates.

452. Sir *E. Perry.*] In those cases to which you have referred, is there not under the Act the power of calling in a common law Judge to sit with the Vice-Chancellor?—Yes.

453. Sir *J. Graham.*] If Mr. Longfield and Mr. Hargreave have satisfactorily exercised their judicial functions in the Incumbered Estates Court, should you say, *à priori*, that they are competent to be Vice-Chancellors of the Court of Chancery in Ireland?—I think they are fully and amply competent; I think they could not be fit to perform the duties in the one court without being fit to perform the duties in the other. There is only this additional circumstance, that the practice of the Court of Chancery is more technical; the practice would be different to the practice of the Incumbered Estates Court; but if this Bill is carried into effect, with such alterations as may be thought necessary, you modify and alter the whole practice of the Court of Chancery, which it is desirable you should do; after all, the practice of a court is very speedily learned.

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454. In England is there any statutable qualification with regard to the time which barristers shall have been called to the bar before they are made Judges?—There is with respect to Vice-Chancellors; with respect to Vice-Chancellors, the requirement, I think, is that they shall be of 15 years' standing. With respect to the Lord Chancellor and the Master of the Rolls, I believe there is no qualification at all. I believe it is not necessary that they should be barristers, and if public opinion would permit it, as it used to be of old, a clergyman might hold either office.

455. Is there any statutable prohibition of Irish barristers filling high judicial stations in England?—No, none whatever.

456. Have you looked at the Bill which is now before the Committee?—Yes.

457. Is there not a statutable prohibition of an English barrister being appointed a Vice-Chancellor in Ireland?—I think that very objectionable; I think it desirable to have as little qualification as possble upon the subject of the appointment of the Judges. Practically speaking, the real check upon an improper appointment is public opinion; it is clear that there may be a number of persons of 15 years' standing in any bar who would be utterly incompetent to perform the duties of a Judge, and many persons under that standing who would be perfectly competent to perform the duties of a Judge.

458. *Chairman.*] The words you object to in the Bill, which is called my Bill, are the words "Barrister-at-Law in Ireland;" supposing the words "in Ireland" were left out, would not the qualification be precisely the same as in the English Act appointing the Vice-Chancellors?—It would be so; I think it is objectionable in the English Act.

459. Although there is no statutable prohibition of a member of the Irish bar being appointed Lord Chancellor, Master of the Rolls, or Vice-Chancellor in England, I believe in practice we have no instance of it?—No.

460. Sir *J. Graham.*] Was not Lord Plunkett destined to be Master of the Rolls in England?—It is stated that Mr. Canning had appointed Lord Plunkett to be Master of the Rolls in England; I have heard it stated that some remonstrances were made to him, in consequence of which he altered his intention, and did not make the appointment; I think it was in 1827, just as I was called to the bar, and I am fully convinced that there was no representation made by the bar upon the subject. I have asked many persons connected with the bar whether they ever heard of any such representation; I have asked the Lord Chancellor the same question, and I do not believe that any representation was made against that appointment by any members of the English bar; I am certain that no meeting was held upon the subject, or that anything like a remonstrance was made by the Bar against the appointment.

461. *Chairman.*] Is it not the fact that Lord Plunkett was appointed Master of the Rolls in England, but for some reason, either the appointment was withdrawn, or he felt himself compelled to abandon it?—It may be so.

462. Sir *J. Graham.*] I will leave it to your discretion to answer the question which I am about to put to you; I will ask you, when you were a law-adviser of the Crown, how was it that an English barrister was sent to Ireland to occupy so important a position in the Incumbered Estates Court?—I have no objection to state what passed, and I have no doubt Lord John Russell would have no objection to my stating what took place; he consulted me as to the persons to be appointed to perform the duties, and seemed to repose a good deal of confidence in the advice which I gave him on the subject; I was very desirous to have two Irish gentlemen appointed, and I applied to several gentlemen with whom I was best acquainted, to know who were the best conveyancers, for it was essential we should have a person thoroughly versed in the law of real property, and a thorough conveyancer for the purpose of performing those duties. The Committee will observe that the Judges of the Incumbered Estates Court do what no Judges have ever done hitherto, they actually approve the title themselves; they perform the ordinary duties of a conveyancer; almost every Irish gentleman whom I spoke to on the subject, stated to me that Dr. Longfield was an extremely competent person, that he had a great knowledge of real property, a great knowledge of conveyancing, and that he was a very fit person; but no person whom I consulted spoke strongly of any other gentleman; accordingly I mentioned that to Lord John Russell, and I suggested a great English conveyancer; I have no objection to mention his name if it is thought desirable; it was not the gentleman who accepted the office; I applied to him, and requested to know

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if he would accept the office; I pressed him very strongly to do so, and after very considerable hesitation and reflection upon the subject, he declined. It was afterwards offered to one or two other persons, who declined to accept the office. I was very much pressed, and found it exceedingly difficult to ascertain who would be a fit person, and I applied to Mr. Christie, who is a most eminent conveyancer in Lincoln's-Inn, if he could recommend any gentleman who would be fit for that purpose, upon which Mr. Christie said, "If you do not mind appointing a very young man, whom nobody knows anything about, I have a young man who was a pupil of mine, who has only been called to the bar a few years, who is a great mathematician and a great lawyer, and who will perform the functions in a manner that you cannot get any other person to do." I said, "Will you write that in a letter to me, and I will show it to Lord John Russell." I did so, and Lord John Russell said, "Let us appoint him." I may say that Mr. Hargreave was appointed before I had seen him; I never had seen him at that time.

463. When you agreed to the 14th recommendation, to which I have already called your attention, did you contemplate that Mr. Hargreave would be included in that transfer?—I did; I expressly stated, "Unless Mr. Longfield and Mr. Hargreave are taken to the Court of Chancery, inasmuch as they have really framed the working of the system, I shall have no confidence whatever that the thing will be carried into effect in a proper manner.

464. Now the Bill, as introduced, disqualifies Mr. Hargreave in a double way, does it not; first, he is somewhat short of 15 years' standing at the bar; and secondly, he is not an Irish barrister?—That is so.

465. Do you think it would be prudent, with regard to the proposed transfer, to introduce that statutable disqualification as against Mr. Hargreave?—I think it would not; if it were thought desirable to continue the qualification, of which I disapprove, still the same exception might be made with respect to persons who have held offices in the Incumbered Estates Court, which is made with respect to other officers, but which is not extended to the Vice-Chancellors, according to one of the clauses.

466. Mr. *Walpole.*] Was not a part of the original recommendation of your Report, that specific persons should be appointed to specific offices?—Yes.

467. For the reasons which you gave a short time ago, you would be of opinion that it would be better to leave that open to the responsible advisers of the Crown, even though the present Bill were drawn up in so large a manner as to comprehend persons who have not a standing of 15 years?—I am bound to say that my view when I suggested that recommendation was, that I anticipated that the Bill would be framed with respect to such members of the Incumbered Estates Court as were essential for the purpose of working the system; that their names should be put into the Bill, and transferred by Act of Parliament.

468. Do not you think it is rather a better form with regard to judicial appointments, that you should leave them entirely in the discretion of the Crown?—Judicial appointments ought generally to be determined by the responsible advisers of the Crown; but if you are transferring a court which works well, it may seem to be an exceptional case, and that you ought to transfer the whole staff of that court which has so worked it.

469. Sir *J. Graham.*] Whatever may be your opinion with regard to recommending the Crown to transfer particular Judges from one court to another, what would you say with respect to vesting the appointment of the chief clerks and junior clerks to be attached to the Vice-Chancellors, not in the Judges, but in the executive government?—That appears to me very objectionable; that, if I remember rightly, is directly opposed to the recommendation of the Commissioners; I think all the Commissioners with whom I communicated upon the subject were of opinion that it would be unfair to make a Judge responsible for the due performance of the duties which are performed by the chief clerks under his immediate control, unless he is able to select the persons who are to carry his instructions into effect.

470. Was that the unanimous opinion of the Commissioners?—It was the unanimous opinion of the Commissioners whom I saw.

471. Mr. *E. Ellice.*] Would you propose that the chief clerk should be appointed without any check upon that appointment on the part of the Government?—I would give this control, that the appointment should be sanctioned by the

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the Lord Chancellor, as it is in England; that is to say, the Lord Chancellor should have a veto in case a very improper person were appointed.

472. Mr. *Walpole.*] In point of fact you would assimilate the appointment of chief clerks in Ireland to the appointment of chief clerks in England?—Yes.

473. Sir *J. Graham.*] To give the appointment of first clerk to the Lord Lieutenant of Ireland would not appear an expedient course?—It would appear to be very objectionable; the result would be that the Judge could not carry into effect what he wished to do; and I apprehend it would follow that the person appointing would have the patronage without the responsibility.

474. Would not that appear to be the high road to the grossest abuse?—Yes.

475. Will you look at clause 19 with respect to the qualification of chief clerks. Is there any such qualification in England for a chief clerk as that he shall be a barrister of six years' standing, or an attorney of 10 years' standing?—No. The qualification in England requires that he shall be an attorney or a solicitor of 10 years' standing; a barrister cannot be appointed to the office. I am not sufficiently well acquainted with the practice in Ireland to know exactly how far that would be necessary in Ireland. My impression would be undoubtedly that a solicitor would be the fit person to be appointed.

476. At all events you will not say *à priori* that six years' training as a barrister is equal to 10 years' training as a solicitor to fill the same office?—The duties performed are essentially those of a solicitor; they are exactly the duties which an intelligent solicitor performs; they are the duties which are performed by a managing clerk in a large office in this country; of course those duties do not include the sale of incumbered estates.

477. Passing from the functions, will you be good enough to look at the salaries at clause 27; the salaries proposed there are equal to the maximum salaries in the Court of Chancery in England, are they not?—They are equal to what the maximum salary of a chief clerk was until the end of last session, when the House of Commons increased the salaries of the chief clerks to 1,500 *l.* a year; they were 1,200 *l.*, and they were increased to 1,500 *l.*

478. *Chairman.*] Are you aware that the plan in the Bill is to commence at 1,000 *l.*, with a power to the Treasury, upon the recommendation of the Lord Chancellor, to increase the salaries to a sum not exceeding 1,250 *l.* a year?—Yes. The salary of the junior clerk is higher than the salary of our junior clerks. I see it is 350 *l.*, raisable to 400 *l.* I forget what the junior clerk has with us. I think it is 300 *l.* for the senior clerk, and 150 *l.* for the junior; I am not quite certain about that.

479. Sir *J. Graham.*] Under the transfer recommended in the Report of the Commissioners, do you contemplate the Lord Chancellor henceforth presiding as an appellate judge, and hearing causes in the first instance?—No; I think that is an objectionable course.

480. Will you refer to clause 18 with respect to the appointment of chief clerk to the Lord Chancellor; does not that point to his hearing original causes?—That would involve hearing original causes, because a chief clerk could not be required, except for that purpose, and that appears to me objectionable for various reasons; there would be no appeal from the Lord Chancellor, except to himself.

481. *Chairman.*] Would there not be an appeal to the House of Lords?—There would be an appeal to the House of Lords; but unless there is a great alteration in the appellate jurisdiction of the House of Lords, that would be an appeal in name, but not in substance.

482. Sir *J. Graham.*] That would be a double appeal, in itself objectionable?—Yes; then the Lord Chancellor leaving office upon a change of Government, and being necessarily a less permanent officer than the Vice-Chancellor, would not be able to follow out the working of a cause or of a suit in the same manner that the judges would do.

483. *Chairman.*] Is there not a class of causes which are determined at the hearing without any reference or anything to work out; for instance, a suit to set aside a deed?—No doubt. In those cases you do not want a chief clerk.

484. Supposing for a moment that the whole business of this new appellate tribunal contemplated by this Bill was not sufficient to occupy more than one-half of the time of the Lord Chancellor, would not it be desirable that he should lend his aid in working out the other business of the court?—It does not so appear

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appear to me; it appears to me objectionable. I think you ought to have a sufficient force to perform the other duties. I think the Lord Chancellor should be confined to the appellate business, and to exercising that general superintendence which he ought to exercise over the performance of the duties of the rest of the court.

485. At present the amount of the appellate business is mere conjecture, and it may happen that the appellate business would not occupy one-half or one-quarter of the Lord Chancellor's time; do not you think it would be very undesirable that he should remain unoccupied during the remaining three-fourths of his time?—I doubt very much whether such would be the result; but if the result should be so, I think, when the event arises, it may be proper to provide for what may be fit to be done. I feel considerable objections to the views of those persons who would have cases determined by the Lord Chancellor with practically no appeal at all.

486. Sir *J. Graham.*] They would be driven to the House of Lords?—Yes.

487. *Chairman.*] Let me explain the scheme of the Bill in reference to this particular point. The intention is that the Lord Chancellor, if it meets with his own concurrence, should devote his time in the first instance to the appellate business of the court; that is to say, he should sit with the appeal judge to discharge that business, assuming that that would not occupy a great portion of his time; he can then lend his aid in discharging that branch of the business of the court which is considerable, which involves no reference; do you see any objection to that, supposing his time not to be fully taken up?—I see the objection which I have stated, that there would be no appeal from his decisions, and practically he could hardly perform the same functions which the Vice-Chancellors will have to perform. It could be hardly expected that the Lord Chancellor should go through an abstract of title, and approve of the title, and therefore he would only be taking some particular part of the functions of the Vice-Chancellors.

488. My question related to business of that character which involved no account or reference, but which could be disposed of at once?—It would be very difficult to ascertain what that business is beforehand. It constantly happens upon the hearing of some cause, that something arises which produces something wholly unexpected, and which produces a result which nobody expected till they began to discuss the matter.

489. Sir *J. Graham.*] Is not this a matter of such importance with reference to the solicitors and suitors of Ireland generally, that it ought not to be left to arrangements to be made, but that it ought to be regulated by statute?—It appears to me not desirable to regulate it by statute; that depends upon what view the Committee may take as to the right course to be adopted.

490. Will you have the goodness to refer to clause 50, with regard to the appointment of the Judge of the Court of Appeal. At line 28 the clause says, "and every judge so nominated and appointed, shall hold his office during Her Majesty's pleasure." Is that a tenure which you would think desirable for a judge of the last resort in Ireland, not during good behaviour, but "during pleasure"?—That seems to be objectionable. It is proposed here that he shall be one of the judges already appointed, which removes a large portion of that objection which would necessarily follow, because he holds his office of judge by freehold.

491. But still his promotion, whatever it may be, from puisne judge to a judge of the last resort, taking precedence next to the Chief Baron, would be conferred "during Her Majesty's pleasure"?—That appears to be objectionable.

492. Sir *E. Perry.*] Would not that apply to an ex-Lord Chancellor?—Yes.

493. Sir *J. Graham.*] In the same clause, at line 34, it appears that if a barrister is taken, he must be a barrister of 15 years' standing; is that similar to the qualification of the Lords Justices in England?—I believe so. I think there is no qualification for a judge in the common law courts in Ireland.

494. Mr. *Walpole.*] Clause 50 appears to relate to two different classes of persons; one called in for a temporary purpose, as the judges are called to act in the Judicial Committee of the Privy Council, and the other, where a judge is appointed *de novo*, he shall hold his appointment during good behaviour; is not that so?—I do not so read the clause.

495. The first part of the clause says, "It shall be lawful for Her Majesty, from time to time, to nominate and appoint a fit person, who shall have exer-

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cised the office of High Chancellor of Ireland, or who shall be one of the judges of the superior courts of common law at Dublin, to be a judge of the Court of Appeal in Chancery, and every judge so nominated and appointed, shall hold his office during Her Majesty's pleasure"?—As I understand it, if he is one of the first persons so named, he would not be exactly like a judge called to the Judicial Committee of the Privy Council, who may be summoned to hear a particular case, or to attend for a particular set of days, and not for another time, but the judge so appointed will, during the time he holds his office, hear every appeal that comes before the court, but that the Queen shall have power to remove him whenever she shall think fit.

496. Would not that imply that it was only for a temporary purpose that he was called in?—He may be removed from his office; but as long as he holds his office, he is to hear every appeal.

497. *Chairman.*] Allow me to call your attention to the discussion which took place between the Commissioners in reference to the appointment of an appeal judge; I believe you are aware that this appointment of a judge of the Common-law Court was intended rather as an experiment in the first instance, to see whether it would answer or not; it was supposed that the business of the Appeal Court might not be very great, and a common-law judge might be able to discharge his duties in his own court, and after term, sit in the Appeal Court, and by that means save the public the charge of appointing a permanent lord justice, with a high salary?—Yes.

498. Supposing, in the first instance, a common-law judge was appointed to act as a judge of the Appeal Court, and it was found afterwards that the business of the Appeal Court was so heavy, that he could not efficiently perform the duties of a common-law judge and a judge of the Appeal Court, it would be necessary to remove him, and to appoint a permanent lord justice; is that your view?—Yes.

499. Having once appointed a common-law judge, supposing the business turned out such as I have described, if he did not chose to resign, how would you get rid of him, supposing he was appointed, only removable upon an appeal to both Houses of Parliament?—Your statement reminds me of the discussion of the subject which had escaped my memory, and which I think in a great measure meets the objection to the judge of the Appeal Court being removable at the discretion of the Crown; at the same time it is an objectionable tenure.

500. Of course we all know that the Lord Chancellor holds his position only during Her Majesty's pleasure?—Yes.

501. Mr. *Walpole.*] To recur to that part of the case which relates to the chief clerks to the Vice-Chancellors, I should like to ask your opinion as to whether you think, under any circumstances, the judges should delegate their judicial powers to their chief clerks, without, in fact, keeping the entire superintendence of the judicial business to be done under their immediate control?—I think they ought to do so.

502. Sir *J. Graham.*] If they did not do so, you would have the office of Master revived under another name, and in a worse form?—Yes, constantly.

503. So that that which is a subject of legitimate jealousy in England, must also be a subject of jealousy in Ireland?—Yes; I may mention that hardly a day occurs but one or other of my chief clerks comes to me, and states that a question has arisen, and that the parties would be very glad to know what I think about it, or if I would wish to have it argued before me; I give him directions to allow or disallow a particular item; I decide the question practically, by finding a certain sum to be due or not due in certain accounts, or I direct the parties to come before me, and argue the question.

504. Have you ever allowed an appeal from the decision of the first clerk to be argued before you in open court?—Yes; a great many matters sanctioned by him are argued before me in open court.

505. Sir *E. Perry.*] Re-hearing your decision?—Re-hearing my decision in this way: I have merely given the chief clerk advice respecting it; I have not heard it argued by counsel. Generally speaking, in those cases the parties prefer having it found in a particular way; and then they say, "Now we will argue it in open court, by a motion to vary the certificate."

506. Those are cases which involve some principle?—Very often a really important principle.

507. *Chairman.*]

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507. *Chairman.*] It is an objection to the chief clerk's certificate which is brought more solemnly before you?—Yes.

508. Sir *J. Graham.*] Does not clause 60 contemplate the Lord Chancellor sitting alone as an appeal judge?—Yes, that is so.

509. Would that be a satisfactory court of appeal, in your opinion?—I think it is preferable to have two judges sitting in a court of appeal; I cannot say that it is unsatisfactory, for it has been long the practice in this country to have an appeal to the Lord Chancellor alone. I think it is desirable to have two judges sitting in appeal; if you have two judges sitting in appeal you necessarily, whether the decision is affirmed or reversed, have two minds agreeing against one at least.

510. If the power given to the Crown under clause 50 be exercised, does it appear to you desirable to retain clause 60?—I should think not.

511. *Chairman.*] Would not you think it desirable to provide for such an emergency as the necessary absence of the Lord Justice or the appeal judge; supposing, for instance, the case of the Lord Chancellor sitting with a common law judge, who had been called in to aid upon the occasion?—What I should be afraid of would be that the Lord Chancellor might, in the course of time, come to be the sole judge of appeal. It appears to me that the clause to which the Solicitor-general called my attention respecting holding the office during pleasure, the motives for which I had forgotten, would guard against this evil, because you might appoint any person with one of the judges to sit with the Lord Chancellor, even if it were intended to appoint some permanent judge of the court of appeal other than one of the judges of the Common Law Courts.

512. Sir *J. Graham.*] You have stated in your report, that an appeal from the Incumbered Estates Court now is not a matter of right, but of option, and that you think it ought not to be any longer a matter of option, but that it should be a matter of right?—I think all appeals should be matter of right.

513. Would not there be great advantage in the transfer of the business of the Incumbered Estates Court to the Court of Chancery, that there would be only one court of appeal, and an universal right of appeal?—Yes; that would be a great advantage..

514. The appeal now is to a tribunal different from that intended from the Incumbered Estates Court which you contemplate to be created under this Bill?—Yes.

515. Might not the uncertainty of appeal from two concurrent jurisdictions lead to confusion?—I think so.

516. The principle upon which you introduced the Incumbered Estates Act, and the principle upon which it has been administered, has been to remove permanent incumbrances from property in Ireland?—Yes.

517. What would you say to a power being given in selling, to take, as a consideration, a permanent incumbrance; would you not say in England, without disrespect to Ireland, that it was an Irish provision so to free an incumbered estate?—I think it a very objectionable provision; I may state with respect to the whole of that portion of the Bill, which is Part 6, that it does not appear to me properly to form any necessary part of this Bill; it is a separate and distinct matter; it relates to the settlement of a certain law of real property, and I should have thought it more desirable to have disposed of it by a separate Act of Parliament, instead of including it in an Act for the transfer of the Incumbered Estates Court to the Court of Chancery.

518. Whether a general provision with regard to the sale of settled estates be germane or not to the matter, what do you say to the power being given in selling an estate, say, of 500 *l.* a year, that it shall be sold, taking as consideration a permanent rentcharge of 400 *l.*?—That appears to me a direct violation of the principle of the Incumbered Estates Act, the object of which is to get rid of those incumbrances; it is a great fetter upon the proprietor whether he pays 300 *l.* interest upon 10,000 *l.*, or as head rent.

519. Does not clause 151 give the power of selling an estate in Ireland with a permanent rentcharge anywhere within the annual value of the estate?—Yes.

520. Is not that provision not only not germane to this matter, but diametrically opposed to the measure?—It appears to me diametrically opposed to the Incumbered Estates Act; the head rents in Ireland are attended with great difficulty; the object of the Incumbered Estates Act was, as far as possible, to make the owner of an estate, the owner of it without the slightest charge of any sort of description upon it; any fetters upon it, to some extent, fetter his means of dealing with it.

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521. *Chairman.*] Are you aware that the 151st section is the same section which the House of Lords passed in the Lord Chancellor's Sale of Settled Estates Bill?—I was not aware of it.

522. That Bill passed the House of Lords, then came to the House of Commons, was read a second time in the House of Commons, passed through a select committee, and failed?—In whatsoever Bill it is, I think it is an objectionable provision; I do not think you can have a more objectionable mode of selling land than making a permanent considerable rentcharge upon it; I do not mean that a mere quit-rent of 40*s.* upon an estate worth 1,000 *l.* a year, is worth mentioning.

523. Do not you think in the modification of settled estates, with a view to such, the interest of the parties to the settlement, it may be desirable that a portion of the estate should be sold, subject to a rentcharge?—I think it is always objectionable; you had better sell the estate and distribute the money.

524. Supposing it not to be a case of the distribution of money, that the estate is to be bought and resold?—You had better sell the estate, and apply as much money as is necessary to pay the rentcharge.

525. Mr. *Walpole.*] Or mortgage the estate to that extent?—Then there is an incumbrance; it is exactly the same thing whether you have 300 *l.* charged upon the land, or as the interest of a sum of 10,000 *l.* practically in the hands of the owner, it is the same thing.

526. *Chairman.*] Is it possible that you did not read the Bill which passed the House of Lords last Session for the sale of settled estates?—No, I did not; I never saw it.

527. Sir *J. Graham.*] With regard to the Lord Chancellor sitting alone to hear appeals, if you will look at the bottom of page 17 of your report, you will find these words, "That a court of appeal should be constituted, consisting of the Lord Chancellor and an additional judge." When you gave that recommendation, did you, or did you not, contemplate that it should be open to the Lord Chancellor to sit alone as an appeal judge?—No, I did not so contemplate it.

528. Do you adhere to the recommendation of the report, that the sale with an indefeasible title in Ireland, shall be extended from incumbered to unincumbered estates?—I do.

529. And also to settled estates?—Yes.

530. Would not the effect of that permission, if granted by law, be to constitute the courts having the power of making such sales the sole conveyancing machinery of Ireland?—I think it has a great tendency to do so. The persons who belong to the court, and who really conduct its business, would become experienced conveyancers; but practically speaking, the business of conveyancers, as conveyancers, will be very much superseded by means of such court, if it works well.

531. If your original view be carried into effect, and the Incumbered Estates Court, with its judges and its experienced officers, be transferred to the Court of Chancery, considering the arrears which exist in the Incumbered Estates Court, do you think that two Vice-Chancellors, with the Master of the Rolls, having the option of whether he takes business of this description or not, will be sufficient judicial strength to meet the accumulated labour?—It is very difficult to answer that question; I am not at all clear that any answer could be given to it until you come to try it. I think you might make the present Masters available for the purpose of assisting in working off any arrears that should be required to be done.

532. Has it occurred to you that it would be possible to advise the Crown to take one of the present Masters, and make him a third Vice-Chancellor, reserving always a legislative restriction, that upon the first vacancy it shall not be filled up without the consent of Parliament?—That might be done; but there would be always this difficulty in it, that if the Master who was appointed the third Vice-Chancellor was restricted to business, other than that of the sale of estates, he would not be of much greater assistance than he is at present, if you continue his functions under the present law of Ireland, for enabling him to administer estates in mere suits of administration, which practically he does in a great measure at present, as I understand the case. If he were to perform the functions relating to the sale of estates only, then he might perhaps feel some difficulty in performing duties which certainly would be very foreign to those he has had hitherto to perform for a considerable length of time, assuming that the

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duties of a Master in Ireland are very much the same as those of Masters here are, or have been. Still it appears to me to be a mode of solving the difficulty, and a mode by which you might get rid of a considerable amount of arrears.

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533. Would you not have the power of distributing the business if there were three Vice-Chancellors?—You might always give the Lord Chancellor that power; practically he possesses the power of distributing the business as he may think fit.

534. If the Master of the Rolls would consent to take business of this description, would not he be a most efficient assistant?—No doubt.

535. Mr. *E. Ellice.*] Might not the business be so distributed that the incumbered estates should go before two Vice-Chancellors, and the unincumbered estates before another Vice-Chancellor?—That would be rather difficult to manage, because it would always require you to ascertain what were incumbered or unincumbered estates, and questions might arise upon it; but you might give what is called regular Chancery business, and the mere administration of estates to one Vice-Chancellor, and you might give the sale and approving of the titles to another; you might do this, you might say that two Vice-Chancellors should be the persons to determine whether a Parliamentary title could be given to particular pieces of land desired to be sold; that another Vice-Chancellor, or two Vice-Chancellors should hear and determine between the rights of persons who claimed a share of the money arising from the sales of estates already sold, and which was then in court remaining to be distributed.

536. *Chairman.*] As I understand your position, it is that approving the titles and selling the estates should be entrusted to two Vice-Chancellors, and then that the administration of the funds should go to another judge?—Yes, to help them in it.

537. Would it not be objectionable, when you transfer the fund for the purpose of administration, that a new judge should have to go over the ground to make himself acquainted with the cause?—Wherever that was necessary, it would be in the highest degree objectionable.

538. To understand the administration of the fund, would it not be absolutely necessary that he should make himself acquainted with the title?—Yes.

539. Mr. *E. Ellice.*] Would not such a distribution of the business after all be absolutely necessary to enable you to determine what should be the permanent judicial establishment of the Court of Equity in Ireland, and what would be requisite to meet the immediate pressure of business occasioned by transferring the incumbered estate business to the Court of Chancery?—Yes; I think it would.

540. Would it not be inexpedient to make so large a permanent establishment in Ireland merely with a view to get rid of that temporary business?—Very much so.

541. Sir *J. Graham.*] Would not the appointment of a third Vice-Chancellor only *pro hac vice* meet that very danger of having too strong an establishment?—I think it would; and without saying how the business is to be distributed, I have no doubt that the Lord Chancellor could with the assistance of the Vice-Chancellors distribute the business in a manner which would be quite unobjectionable, and afford great relief to the court.

542. Does not the difficulty, if it exists, proceed upon the assumption that there is no one of the four Masters competent to discharge both the administrative and judicial business with respect to the sales of estates?—I have no doubt several of the Masters are competent.

543. *Chairman.*] Do not you think it would be much wiser to trust the distribution of the business to the judges of the court than to proceed to determine it by Act of Parliament?—Yes; I do not wish to have it undersood that I suggest any mode of distribution; I only think that the Lord Chancellor, with the assistance of the Vice-Chancellors, could easily make such a distribution of the business as would practically be found of great assistance to the court.

544. But still I understand, when you say distributing the business, you would keep in view the recommendation of the Commissioners, namely, that a judge should conduct each suit from its commencement to its termination?—Yes.

545. Sir *J. Graham.*] Assuming, generally, with respect to incumbered estates, that adverse interests are represented by parties before the judge, is it equally probable that in the sale of unincumbered estates there would be parties representing

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representing dormant interests?—No; and undoubtedly the responsibility of a court is increased tenfold where there are no adverse parties. Every person who has performed anything in the shape of judicial business, knows how much more difficult it is to dispose of cases which are not contested than of contested cases; where there is any responsibility resting upon a judge, that responsibility is tenfold greater in unopposed cases.

546. *Ceteris paribus* it is highly probable that there would be less representation of interest, with respect to unincumbered estates about to be sold than with respect to incumbered estates, as to title?—It is difficult to say that. With respect to incumbered estates, although the incumbrancers may quarrel amongst themselves, as to the distribution of the fund, they have a common interest in making the estate a perfectly good and valid estate against all the world. Now the owner of an unincumbered estate has no other interest than that.

547. *Chairman.*] Would there be any difference, practically, between the petition of an unincumbered owner and an incumbered owner in that particular, as to title?—I doubt whether there would be any difference.

548. Mr. *E. Ellice.*] Do not you think dormant interests are more likely to find some representative in the sale of an incumbered estate than in the sale of an unincumbered estate not brought before the court?—I cannot say that I should be clear that there would be anything at all arising from that circumstance that would be appreciable.

549. You think that no other protection would be necessary for such dormant interests than the watchfulness of the court with regard to the title?—It was a very great experiment selling an incumbered estate at all. A considerable discussion took place in Parliament, in which Sir James Graham took very great interest, upon the Act, endeavouring to effect the sale of an incumbered estate through the Court of Chancery, in the year previous to that in which the Incumbered Estate Act passed, which is in fact an Act for the further sale; I think the title of the Act uses that expression. The great difficulty we felt there was to give sufficient notices; sufficient publicity to call upon persons to bring forward their claims. I think a great part of the inefficiency of that Act was occasioned by the manner in which it was overloaded with those details which were considered necessary at that time; that was found not to work, and in the next year we took a broader step, in fact, we cut the knot; and then you must see if the plan has worked well; but I think the more you discuss and consider the question you will find this to be the result; that all persons that come before the court for the sale of an estate, and those who are admitted to have incumbrances on that estate are leagued together, to make out that they have a perfectly good title to that estate as against all the world; the owner of an unincumbered estate does nothing more. To check this the object is to give notice to all the world to bring forward their claims as easily as possible. There is this undoubtedly to be said, that where there are incumbrances upon an estate in England (I believe in Ireland incumbrances have been made very much by judgments and registry) there has usually been a considerable examination of the title. Where an unincumbered estate is sold, there has been no examination of the title; accordingly, practically speaking, conveyancers in England find that there is no estate more difficult to make a marketable title to than an estate in which there have been no dealings for a great number of years.

550. Sir *J. Graham.*] I cannot fail to ask you to recollect the Committee upon which I had the honour of serving with you with respect to Receivers in Ireland. Do you think a measure reforming the practice of the Court of Chancery in Ireland, which you hold to be a *sine qua non,* as precedent to the transfer of the Incumbered Estates Court to the Court of Chancery, is a perfect measure which does not deal with the receivers as they are now appointed in Ireland, more particularly with regard to the frequency of judgments in Ireland?—I believe the frequency of judgments in Ireland, or searches for judgments, will be much diminished for the future, at least by the operation of an Act which I had the honour of passing when I was in Parliament, it only makes it necessary to search for a certain number of years, and it will diminish it to a considerable extent. Besides this, the Incumbered Estates Act must have had a considerable effect in diminishing, but to what extent I am unable to state.

551. Mr. *Whiteside.*] In reference to the first question which we have agreed to inquire into, "Whether it will be expedient to transfer the existing business

of

of the Incumbered Estates Court to the Court of Chancery," did you examine, in order to enable you to decide that question, the condition of the Court of Chancery in Ireland?—I personally was not present at the examination of anybody; all that I saw was the printed evidence which was sent over to me, and which is printed in the Appendix to the Report.

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552. In point of fact, you do not know of your own knowledge, in what state the business of the Court of Chancery is?—No; I do not.

553. Allow me to remind you of a very valuable Act which you were the means of passing, called the Chancery Regulation Act; do you recollect by that measure you created the Masters in Chancery before you succeeded in carrying the reform in England by the appointment of Vice-Chancellors to a certain extent?—In a great measure.

554. Permit me to draw your attention to a return, which was moved for by myself, which contains the amount of business in Master Litton's office; "Number of cause petitions under the Court of Chancery (Ireland); Regulation Act, 1850, referred to me in each year from the 14th day of August 1850 to the present time, distinguishing the cases under the 15th section of such Act, from the General Cause Petition Cases." From the 14th of August 1850 to the date of his report, the 1st of June 1855 he decided 408 cases under the 15th section, 130 general cause petitions, making a total of 538. "Number of meetings had before me in pursuance of summonses or notices in the year ending 31st day of December 1854, distinguishing those in the Long and Short Cause Lists, and also distinguishing those generally denominated receiver's business from the general business, and of the number of orders made by me on receivership business, general business, Long Cause Lists, 964; Short Cause Lists, 1,576; Total 2,540. Receiver business, Long Cause Lists, 293; Short Cause Lists, 846; Total, 1,139." "Total number of meetings in the year 1854, pursuant to summons and notices in the Long and Short Cause Lists, 3,679." "Number of orders on receiver business, 31, exclusive of reports." "Number of cases distinguished as long causes, heard by me in the year ending the 31st day of December 1854, 482." "Number of receivers, sequestrators, guardians of minors, committees of lunatics at present managing estates under the authority of the Court of Chancery in Ireland, the business whereof is attached to my office, and the number of receiver's accounts passed in my office in the year ending 31st day of December 1854; also of the number of meetings before me on receiver's statement of facts within said year;" then he gives the figures: "Numbers of receivers, &c. the business whereof is attached to my office, 356; number of receiver's accounts passed in my office in the year ending 31st December 1854, 313; number of meetings before me on receiver's statement, in the year ending 31st December 1854, 826;" with that amount of business under the operation of your Bill, which I may inform you has brought an immense quantity of small business into the court, which is effectually disposed of, would you say that Mr. Hargreave or Mr. Longfield, placed in the Court of Chancery, can transact it; including the Receiver Master there and five Masters, even with the improved practice with reference to cases that do not fall within your Act of Parliament, all that business, the accruing business of the Incumbered Estates Court, supposing it to continue on the same principle on which it now exists; the sale of incumbered estates, not incumbered to the amount of one-half which is the limit by your Bill, and the sale of unincumbered estates, the amount of which you cannot fix or specify; besides that you have to dispose of the arrear which is specified in this report to be of this nature. I wish to draw your attention to the words; the words are these, "The amount of the business was originally so great, and the staff employed so inadequate, as to cause the existing arrear; the number of cases not yet wound up is 1,633, being nearly one-half of the entire number brought into the court; in 307 only of these 1,633 cases sales have taken place, and the settling of the final schedule, which is the most important stage, in only 216; so that, irrespective of the accruing business, there remain 1,300 cases in which sales are yet to take place; and 1,400 cases in which final schedules have not yet been settled, leaving about one-third of the business undisposed of. The effect of this pressure in retarding the dispatch of business, may be estimated from the fact shown by the returns, that the average period which now elapses between the presenting of a petition and the settlement of the final schedule is about three years." Assuming that this statement of one of the Masters gives a fair representation to you of the ordinary business of the other three, are you of opinion, with that state-

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ment before you, that one of those gentleman, appointed a Vice-Chancellor, could transact the business, and do the work proposed to be cast upon him by your report? —I am not able to judge from the return which you have just read to me, how much of that is merely administrative, or how much is properly judicial. The quantity of business got through by the chief clerks under me and two clerks under them, every day, is enormous. That all might be made to bear a very alarming aspect, if you put the cases down as separate and distict matters, but practically they are disposed of very rapidly; I may state that the matters which I dispose of in chambers, upon the average, do not take 10 minutes each of them.

555. Are not those causes then required by your Act to be heard by the Master from beginning to end; the Judge never sees them unless there be an objection? —I cannot answer that question without asking another. Does that statement of the meetings before the Master, which you have read, include all those things in which there is nothing to be discussed?

556. The receivers appeal to the Master to know whether he will or will not evict a tenant, or whether he will make a lease of such and such a farm. He must look into that and consider it, and when an account is laid before him, he must watch that account?—That is done by the clerks with us.

557. Do not you think it would be necessary to inquire carefully into the state of the offices and business of the Court of Chancery before a staff was created to transact that business which is proposed to be added to it?—I think it is very desirable that you should not get rid of the existing staff of the Court of Chancery, assuming that you are to consolidate the two courts, the Incumbered Estates Court and the Court of Chancery, without providing for their getting through the business which there may be in the Court of Chancery, or ascertaining that it is not necessary to continue them by reason of the remaining staff being sufficient to get through the business required.

558. You have provided that the Masters shall continue till they clear off the arrears in the Court of Chancery?—I observe in the Bill that they are to be continued as long as there is any business to be done by them.

559. If it be right to continue the Masters to clear off the arrears in the Court of Chancery, what objection, in principle, is there to continuing the Incumbered Estates Commissioners to clear off the arrears in their court, giving at the same time a concurrent jurisdiction to the Court of Chancery, to sell and deal with all accruing cases?—I feel the objection, which I was about to state to the Committee, if they will permit me. I thought the provision with respect to the Masters in this Bill open to some objection with respect to continuing them merely to dispose of the arrears. It was, no doubt, taken from the English Act. I do not think it works well. What I should have been more disposed to do would have been this: to continue them to perform their functions, and not to fill up the offices when they became vacant. Thereupon they would perform their duties as long as they were required, they would be capable of performing their duties until the last Master ceased. By this Bill there is a curious sort of provision: they are first put an end to, or continued simply to perform their functions till the arrears are disposed of, and then there is a species of reconstruction for the purpose of making a Receiver Master.

560. To give you an idea of the quantity of receivers, there is a Receiver Master who has 1,100 receivers attached to his office; and, exclusive of those, the other four Masters have about the same number attached to them. What objection, in principle, is there to allowing the Commissioners of the Incumbered Estates Court to continue to wind up their arrears. Is it not a reflection upon the character of gentlemen in their high position, to suppose that they would be less attentive to winding up the business which they have now to discharge, than they have been in the transaction of their past business?—If it is reflection at all, it is a reflection upon human nature. I believe practically it will be found that it cannot be done; possibly you would find that persons who have other prospects would not continue to hold their offices; of course you cannot compel persons to work if they are merely to work out the fag end of a measure. You will find that those persons not being entitled to compensation, would probably not be induced to continue.

561. Except that general reflection upon human nature, there is no reason in principle, is there, why a concurrent jurisdiction should not be given to a reformed Court of Chancery, and allow these gentlemen to exercise their jurisdiction until they have cleared off this large arrear?—The objection in principle appears

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appears to me, that practically you never find it work well; you never find that a court, or anything that is merely working out the dregs, ever does the business effectually.

562. It is proposed to give a good court of appeal, therefore if unfortunately they should become lax in their practice you would guard against that, would not you?—I am afraid I can only answer that question by suggesting another question; supposing in that state of things the present officers, who are most efficient in the conduct of the business, were to say, "Well, we decline to go on with the business;" could you appoint a person effectually to work out the mere dregs or mere arrears.

563. You have stated also that you understood that this court, as created, gave universal satisfaction. and that there were but few appeals from it?—I believe it to be so.

564. You have mentioned likewise, that which I anticipated you would, that the not granting an appeal from the judgment of a court, unless the Judge chose to grant it himself, was unusual and unprecedented?—I think it very objectionable.

565. I have a Return in my hand of the number of appeals and their results; it is "A Return of the Number of Appeals from the Incumbered Estates Court, Ireland, to the Privy Council, Ireland, from the 1st day of May 1852, to the 20th day of March 1854; and of the Reversals and Affirmations of such Appeals, separately stated, with the Names of the Parties in each case." Then out of the first 27, the rest not being heard, I find 12 reversed; what I am referring to, is that the number of appeals depends upon the option of the Judge by your Act?—Yes.

566. The Judges appear from this Return to have granted 42 appeals, and by a subsequent Return, 52 altogether; out of the 42 in the first Return, there are only down to number 27 disposed of; of the 27, 12 are reversed; is that a large proportion of reversals of judgment in your opinion?—I have never examined into that question at all; there have been a great many appeals from my own decisions, but I have never had the curiosity to ascertain how many have been reversed.

567. The second Return begins with number 28, and ends at number 52; of 22 cases, 13 stood, and 9 reversed; from your practice at, and knowledge of the Bar, is it not a very different thing for a gentleman to sit in chambers and dispose of matters in chambers, where the Bar do not generally attend, and to sit in court before an astute and highly educated Bar?—Quite different.

568. Are you prepared to say from your experience, if the Incumbered Estates Commissioners are transferred to the Court of Chancery, and sit before the heads of the Bar, that they are, in reference to the Chancery business, likely to give satisfaction to those persons who have practised in the Court of Chancery all their lives, and who are the leaders of the profession?—Of course I cannot draw comparisons between persons with whom I am unacquainted. All I can state is my firm belief, that the persons who have administered the law in the Incumbered Estates Court, would be fully competent to administer all the law that would come before them in the Court of Chancery.

569. Would they be fully competent in point of practice?—The practice is proposed to be altered; we have not found any great difficulty in point of practice. It has been a frequent thing to have a common law lawyer made Lord Chancellor; Lord Lyndhurst was made Lord Chancellor; he had no knowledge of the practice, but he was a very effective Judge, and Lord Truro the same; the practice is very easily ascertained; the officers inform you what the practice is.

570. I believe you practised yourself exclusively at the Chancery Bar?—Early in my professional life I went a circuit.

571. Sir Samuel Romilly, I believe, practised at the Chancery Bar, and in later years he led the Chancery Bar?—He led the Midland Circuit for many years.

572. But he led the Chancery Bar afterwards?—Yes.

573. I suppose you are aware, that in Ireland, since Lord Redesdale's time, the leaders of the Bar have become almost exclusively attached to the Court of Chancery?—I have understood so.

574. Do not you think it deserves some consideration, whether the Commissioners of the Incumbered Estates Court who have not been practising in the Court of Chancery, when they are appointed to discharge the business of the

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Court of Equity before those barristers, that I have referred to, who are very much senior to them, would be as competent to dispose of the business of the Court of Equity as they may be to dispose of the business of the Incumbered Estates Court?—The way in which I looked at the question was this: I looked at the whole of this Commission simply with a view of seeing in what way we could most effectually free land from incumbrances, and give good titles to the land; that was the mode in which I looked at it. If I had been asked the question simply as a question of reforming the Court of Chancery and appointing Vice-Chancellors, I should not have thought it proper for any Commission to recommend that certain persons should be taken from that place and put over the heads, if it be so, of the persons who have been practising in the Court of Chancery: but if the question be the consolidation of the two courts, or the union of the two, transferring to the Court of Chancery the means of selling estates in such a manner that there shall be an indefeasible title granted, and that system has been worked out satisfactorily and efficiently in one court; then I am bound to say I do not think you will do it well unless you transfer the persons who have shown their competency to do the business.

575. Do you propose to confine the Vice-Chancellors who are to be appointed to the transaction of the enormous business which it is manifest will accrue in reference to the sale of incumbered estates alone, or do you propose that they shall also undertake that which is the business of the Court of Chancery?—Yes, I propose that they should do both. I cannot tell the relative business that there is between England and Ireland, but judging from the population and the amount of capital that there is in England and in Ireland, I should assume that the general business of the Court of Chancery must be very much larger in England than in Ireland, to what extent I cannot very well tell. At present I am quite sure that three Vice-Chancellors and the Master of the Rolls are quite competent to get through all the business of the Court of Chancery with the assistance of their chief clerks, although the business has increased, I believe more than doubled, since the Chancery Amendment Act came into operation in this country.

576. Sir *J. Graham.*] Will you state to the Committee at what hour you and the Vice-Chancellors meet in the morning, and how long you sit each day?—I believe the Vice-Chancellors sit as I do. I take my seat pretty punctually as the clock strikes 10, and I sit till four o'clock every day, six days in the week. Then, in addition to that, I have business in chambers; in addition to that I have also Record business, which is separate and distinct.

577. How many days in the year do you sit in Court?—I cannot tell the exact number of days in the year. I think it may be stated to be about 200.

578. Mr. *Walpole.*] What is the extent of time taken up in chamber business?—In consulting with the chief clerks, and talking to them about it, and hearing matters, I should say that the chamber business does not occupy more than from half an hour to an hour a day.

579. Besides that, you have in the evening to consider your judgments, and so on?—Yes.

580. Mr. *Whiteside.*] You have no Incumbered Estates Court business?—No.

581. Could you undertake, with the present amount of business you have to discharge, the sale, as contemplated by the Bill, of all the incumbered estates in this country conferring a Parliamentary title, to read the abstracts of title yourself, and also take a share of the sale of unincumbered estates through the country, and to read the abstracts of the titles of those estates yourself?—No; and, what is more, I am bound to say, if, with any amount of salary, you offered me to perform the functions which the Incumbered Estates Commissioners perform, I should decline; I should say, I do not consider myself competent to do it; it is some time since I have acted as a conveyancer, it requires great familiarity, and a great knowledge of the subject, and none but a thorough conveyancer is really to be trusted to say that this is an estate to which you may safely give a Parliamentary title, and also to say that no persons can substantiate a claim upon it, and I should not consider myself competent to perform those functions without again going through a very considerable training for that purpose.

582. Have you heard that the Master of the Rolls in Ireland has pronounced the same opinion, that he would not be able, physically or mentally, to undertake the labour which this Bill proposes to cast upon him?—I do not know with respect

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respect to the amount of labour; my observation was with respect to the mental capacity to perform those functions.

583. Supposing the Master of the Rolls to be fully occupied, and that he is likewise occupied at night to some degree, you would, as I understand you, admit that it would be impossible for that Judge to read a number of abstracts of title, and pronounce as a conveyancer his opinion upon the important question of whether the estate was to be sold with a Parliamentary title or not?—Undoubtedly; but I should consider that there could not be the same number of cases that would require argument in Ireland as in England, nor I should think one-half, judging by the difference of wealth and population.

584. You have stated that you are favourable to the sale of unincumbered estates; I presume you mean only to transfer them in cases where the owner desires to sell the estate to another?—Yes; I would never make it compulsory; I would allow a person to sell his estate without the Court of Chancery if he thought fit.

585. The effect would be, if there be the assumed value in a Parliamentary title, to make the Court of Chancery the conveyancing machine in Ireland?—Yes.

586. Have you ascertained from the register what are the number of deeds registered in Ireland?—No.

587. Is not that a matter which would require to be examined into with a view to guess at the quantity of work which would have to be done under that principle?—Yes.

588. I think I understand you to say that the responsibility of a Judge increases in cases where there are not litigant parties before him?—Very much; in my opinion the responsibility and difficulty increase very much.

589. And the possibility of frauds likewise?—Yes; very much.

590. As you have truly said, where there are incumbrances, the interest of the parties before they lend the money prompts them to look into the title, and consequently your difficulties are fewer?—Yes.

591. Have you seen any estimate of what the average expense is of the sale of an estate, no matter how small a one, through the Incumbered Estates Court as it now exists?—No, I do not know what the per-centage is upon the average; that is what I should judge from.

592. Am I to understand you to say, that the two Vice-Chancellors, besides transacting all the business to which I have adverted, are also to hear all the original causes which are now heard by the Lord Chancellor?—So I understand the Bill.

593. He is to be only a Judge of Appeal?—Yes.

594. Does not it occur to you that the condition of the Lord Chancellor in Ireland is different from the position of the Lord Chancellor in England, because he has no House of Lords to attend, and no important political duties to discharge?—Yes, I presume it is so.

595. If it be found useful for the Lord Chancellor to work as he now does as a Chancellor in hearing original causes, would it not be necessary to provide against the evil, which you have properly suggested, of his sitting as a Judge upon his own judgments by way of appeal?—It might be so; unless there is something in this Bill to prohibit it, there is nothing that I am aware of to prevent the Lord Chancellor from hearing such causes as he thinks fit. The Lord Chancellor in England and the Lord Chancellor in Ireland may say that he will hear any cause which is before the Vice-Chancellors.

596. The objectionable part of this Bill, in your opinion, is the appointment of the chief clerks, and likewise that which appoints the Lord Chancellor to perform all the administrative functions according to the scheme of the Master of the Rolls, and the Vice-Chancellors are to hear all the causes and do all the business, which has been suggested in the way of clearing off the arrears of the Incumbered Estates Court?—No doubt; whether that is a sufficient force for the purpose I cannot form an opinion; if it be not, it would be desirable to increase it.

597. Do not you think the opinion of the practising solicitors in Ireland ought to have considerable weight upon such a question?—They ought to be able to form an opinion better than I can.

598. Mr. *E. Ellice.*] You would be of opinion, whatever the amount of business is, that it would be advisable to increase the temporary force of the

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Court of Chancery, so as to overtake the arrears, and go on with the current business?—Yes.

599. Sir *J. Graham.*] Does your experience of the recommendation of the Chancery Commission in England, that the Masters are henceforth to transact no business except winding up the arrears before them, lead you to the opinion that that arrangement works satisfactorily?—In this case it works satisfactorily; practically, the effect of it is to transfer all the business to the new Judges and to the clerks; they come in with their reports before the Court, and then they say to the Judge, We are very desirous that you should undertake it in chambers before your chief clerk; the answer is, We have already as much as we can do, we had rather not; then it is pressed, and it is adopted.

600. The replication of the Masters is, Do not let us do it?—They are the parties that apply, and, practically, a great number of cases are transferred; I believe that a great proportion of the Masters have been discontinued. Those who remain, practically, have not much business.

601. Mr. *E. Ellice.*] Is it not the fact that the business goes on more efficiently and much better than it did before?—Yes.

602. I believe counsel are not heard before the chief clerks?—No.

603. Is not that a great facility in the transaction of business?—Yes.

604. Would you recommend in Ireland the same practice, that counsel should only be heard before the court?—I should think that very desirable; I think this Bill might be improved by omitting the provisions with regard to the practice of the court, and by giving general powers to the Lord Chancellor with the Vice-Chancellors to make general rules; it would work better than a large part of this Bill. Clauses 70 to 90 are almost altogether of that description.

605. Mr. *Whiteside.*] Did you assume, in making your report, that there was provision in the offices of the Court of Chancery for the reception of this immense mass of business which is to be transferred to it?—No doubt.

606. Sir *E. Perry.*] How would you provide for the practice of the Incumbered Estates Court being transferred to the Court of Chancery without provision for it in the Act?—What I should do would be to continue the functions of the Incumbered Estates Act, and transfer them by declaring that those provisions should be continued, and then merely making such additions to them as might be thought necessary by way of supplement.

607. Would it not be very desirable to have a clause, stating that the practice of the Incumbered Estates Court should be continued until it was altered by a general rule?—I do not like to bind persons to practise by Act of Parliament; it is found to be very inconvenient.

608. The public in Ireland seem to have a fear of going into the Court of Chancery; they are satisfied with the Incumbered Estates Court, and with the rules as laid down by the Commissioners. The fear is that the practice of the Court of Chancery will be adopted, and the practice adopted by the Incumbered Estates Court will be abolished?—No doubt; you might easily direct that the practice existing in the Incumbered Estates Court should, as far as it is applicable, prevail in the Court of Chancery.

609. I find in page 7 of the Appendix this passage: "The Commissioners have laid it down as a general canon for their guidance in the discharge of their duties, that it is incumbent upon them to take care that any party who uses moderate diligence in the pursuit of justice shall not be frustrated by a point of form; and that the neglect of any mere practice shall not be met by a disproportionate penalty." That is a very valuable rule, but I suppose the practice of the Court of Chancery is more technical than that of the Incumbered Estates Court?—It would be desirable to modify the position of the Court of Chancery.

610. *Chairman.*] I think there is but little technicality in the practice of the Court of Chancery at present?—I think it is very much thrown aside.

611. You have been asked a question in reference to the appeals; it was stated that there were 52 orders appealed from; of these 52, 19 have been reversed. I have now a document before me from the secretary of the Incumbered Estates Court, of which I will give you the details. The appeals are from the full court orders, that is, the orders from the three Commissioners, and of those they have pronounced 1,369; out of 1,369 orders the parties have been dissatisfied with 62; of those 62 appeals 42 have been affirmed, 19 have been reversed, and 1 referred back; do you conceive that 62 appeals out of 1,369 orders is a large number?—I should think it a very small number; I presume from your statement

statement that in every case where the parties have wished to appeal they have been allowed to appeal.

612. Out of 1,369 full court orders, covering a period of six years, there have been 19 decisions of the court reversed?—I consider that a very small number; what appears to me to be the most important thing, and the thing I look at most (in the distribution of the money there may be questions of appeal), is to ascertain whether there has been any complaint that the Commissioners have sold an estate belonging to a person who had not an opportunity of being heard before the court; I have heard a case stated, but it appeared to me to be a very trifling matter; a mere question of boundary, to a very small extent.

613. I have given 1,369 as the number of full court orders, but you will find that the number of orders of the full court bear no comparison to those made and acted on by the Commissioners sitting in chamber, the court orders being made only on appeal from the orders made by the Commissioners in chamber, and on applications to make conditional orders for sale absolute. The secretary says it would be impossible to ascertain with accuracy the number of orders and rulings in chamber, and bearing in mind that an appeal lies from every order in chamber to the full court, and from the full court to the Judicial Committee of the Privy Council, is it not a singular instance that in the enormous business of this court there have been but 19 cases in which their decisions have been reversed?—It appears to me a very small number.

[*The following Paper was delivered in.*]

"STATEMENT showing the Number of Orders made by the Commissioners sitting in full Court, the Number Appealed from, Affirmed, and Reversed, from the commencement of the Commission to the present time.

Number of Orders made - - - - -		1,369
Number of Orders appealed from - - - -		62
Number of Orders affirmed - - - -	42	
Number of Orders reversed - - - -	19	
Number of Orders referred back - - -	1	
		62

"The number of orders of the full Court bear no comparison to those made and acted on by the Commissioners sitting in chamber, the Court orders being made only in appeal from the orders made by the Commissioners in chamber, and on applications to make conditional orders for sale absolute. It would, in fact, be almost impossible to ascertain with accuracy the number of chamber orders and rulings."

614. With regard to some questions which were put to you as to the 14th resolution, at page 23, I believe I am right in saying that that 14th resolution was come to in London at the meeting at the Rolls House?—Yes.

615. In the absence of the Lord Chancellor, Chief Justice Monahan, and the Right Honourable Francis Blackburne?—Yes.

616. And that 14th resolution was struck out at a meeting in Dublin, at which they were present, and at which neither you nor Mr. Cairns were present?—Yes.

617. According to the practice pursued in this Commission, was not it usual, after each day's proceedings in Dublin, to have printed minutes transmitted to London?—I have no doubt I received the minutes, but I did not look at them.

618. That 14th resolution was come to upon the 31st of March, and it was struck out or omitted on the 12th of April; I presume, in the ordinary course, you had the minutes of proceedings omitting it. I find there were several other meetings held before the report was finally settled. I believe after the draft report had been finally settled, omitting anything founded upon that 14th resolution, that draft report was transmitted to each Commissioner?—Yes.

619. I believe some time elapsed, with the view of giving each English Commissioner the opportunity of making any objection?—Yes.

620. You did not call the attention of the Commissioners to any objection upon your part to the 14th resolution being struck out?—I did not. In fact, I was obliged to write with considerable hurry, owing to a great pressure of business.

621. Mr. *Walpole.*] You adhered to your opinion with respect to the 14th resolution, but you did not think it advisable specifically to record it?—I thought

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it very desirable to record it, but not advisable to dissent from the Commissioners upon the subject.

622. With respect to the appointment of the Commissioners, I believe you did not, in reference to their appointments, take the opinion of either of the law officers?—I did not.

623. Nor of the Irish Lord Chancellor?—I did not certainly take the opinion of the Lord Chancellor; it was not for me to do it.

624. Sir *J. Graham.*] I understood you to say that you distinctly communicated with Lord John Russell, the then head of the Government, upon this subject?—Yes, distinctly.

625. *Chairman.*] You have objected to a provision in this Bill as it is prepared, as being contrary to the recommendation of the report in reference to the appointment of chief clerks; perhaps you will explain to the Committee, supposing that the appointment was left entirely in the hands of the Judge, and the Judge made a bad appointment, what the responsibility would be for Parliament and the country?—The responsibility appears to me to be this: it is no doubt impossible to preclude the possibility of bad appointments, but the Judge would not be able to get through his business unless he appointed a proper person; he would find himself getting into arrear; he would find himself deceived by his chief clerk, not intentionally, but in fact, and he would fall into disrepute, and the public opinion of this country would be strongly expressed against him. If the chief clerk was incompetent he would have the power of removing him; he would say, I appointed you with the view of assisting me, I now find I must remove you, which he can do with the assent of the Lord Chancellor; but if the chief clerk were appointed by the Government, I do not believe that any Judge could remove him; it would be said practically, you do not go on well with him because you did not appoint him, and the question would be then a sort of half political and half judicial question, to be determined by the Lord Chancellor, and I should expect in such a case, not from any knowledge of Ireland, but from one's general knowledge of such matters, that the influence of the Government that appointed him would be employed to back him and support him. But if he had been appointed by the Judge, and the Judge found him incompetent, and wanted to get rid of him, no influence of that kind would arise; he would say, although I appointed this person, I find that I cannot get on with him; I must have another person in his place.

626. Mr. *E. Ellice.*] I thought you said that the chief clerk's appointment should be sanctioned by the Lord Chancellor?—Yes; but practically you find that this is the effect of the office being sanctioned by the Lord Chancellor. The Lord Chancellor always sanctions the appointment unless there is some gross impropriety.

627. *Chairman.*] If you look at the framework of this Bill, you will find that there is no difference in the power of removal, whether he is appointed by the Judge or the executive?—It makes a great difference practically.

628. The two powers of removal are these, no matter how the chief clerk is appointed: the Judge can remove him by an order, expressing in the order some sufficient cause; the two Vice-Chancellors or the Lord Chancellor can remove him without stating any cause; it makes no difference in that respect, whether the appointment is in the Judge or in the Government, does it?—It would practically make a great difference, if the Judge was satisfied that by removing the chief clerk he should incur the disapprobation of the Government who appointed him. It might be supposed that he wished his removal because he was appointed by the Government.

629. He removes him because he is incompetent to perform his duties; does it make any difference whether he is appointed by himself or by the Government?—The 25th clause is this: "It shall be lawful for the Judge, to whose court any chief clerk or junior clerk to be appointed under this Act shall be attached, by any order to remove any such chief clerk or junior clerk from his office for some sufficient cause, to be in such order expressed?"—Who is to be the judge of the sufficiency of the cause. I presume it must be the Lord Chancellor, because if it is to be the Vice-Chancellor, you ought to strike out the word "sufficient," and strike out the word "cause." He would of course say that any cause is a sufficient cause if he is the judge of it; but if there is a question whether the cause is sufficient, there must be some appeal. To whom is he to

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appeal for that purpose? I presume to the Lord Chancellor; there must be some tribunal for that purpose. In any event the evil I have suggested is probable.

630. Would you propose that tribunal to be the Appellate Court?—Then there is very considerable difficulty if you are to have this sort of question, Here is a clerk whom the Judge says, "I cannot get on with;" he applies to another Judge to remove him; he says, "No, I do not like to do it, he was appointed by the Lord-Lieutenant." The Judge says, "I will remove him myself, and express the cause in the order." Upon which the person removed appeals to the Court of Appeal, which says, "There is no sufficient cause alleged; the mere expression of it in the order is not sufficient; there must be the existence of a sufficient cause, and, in addition to its existence, the expression of it in the order."

631. Sir *J. Graham.*] Does not the Lord Chancellor of Ireland change with the Government of Ireland?—Yes.

632. While the Government remains unchanged, a Judge would be naturally very unwilling, would he not, to remove a chief clerk appointed by the Lord-Lieutenant then in office, the Lord-Lieutenant being connected with the Government of the day?—I should think so.

633. Under a change of Government, the Lord Chancellor changes; would there not be very great awkwardness in making vacancies for the new Government by the removal of chief clerks?—Public opinion in this country would be so strongly expressed against a matter of that sort, that it would not be possible; and I believe the same thing would exist in Ireland.

634. *Chairman.*] Are you aware that these provisions, as to removal, are taken from the English Act?—Yes; the provisions for removal are right, if the clerk has been appointed by the Judge himself, but it alters the whole character of the clause, if appointed by the Government; if the Judge himself has put him there, he selects a person to help him, and from that circumstance you have reasonable security that he will not lightly quarrel with him; but if he has somebody put upon him, his character and feeling is totally changed.

635. Mr. *Walpole.*] Is not the great object to get a chief clerk who works in harmony with the Judge; temper, character, and disposition might make the two work inharmoniously together; is not the remedy, not by removal, but by the first appointment by the Judge?—I think so.

636. Sir *E. Perry.*] Do you contemplate that the Judge is to have the appointment and the removal of the chief clerks?—He has not the removal with us.

637. Do not all your objections apply with equal force to the case of a Judge being appointed, and finding a chief clerk in office?—I think not; I think there is a total difference between a Judge upon his appointment finding a number of persons in the office to which he is appointed, and his having a number of persons put upon him.

638. Sir *J. Graham.*] The appointment by the Bill amounts to a political appointment, and the appointment referred to in the last question was originally judicial?—Yes.

639. *Chairman.*] Supposing the Judge nominated his son, who was 25 years of age, to fill the office, you would hardly expect that the Judge, even though he found his son inefficient, would make an order to remove him from incompetence?—I should assume that a Judge would not appoint his own son if he were unfit for the office.

640. Mr. *E. Ellice.*] Would not the Lord Chancellor's veto be a protection from that?—I am quite sure that no Judge in this country would for his own sake make an appointment which was obviously improper.

641. Mr. *Kirk.*] Might not the difficulty be solved in this way; supposing the Government to appoint the chief clerk, and to give the Judge a veto as to whether the appointment is an acceptable one to him or not?—I should rather give the Judge the power of selection; it is much better that he should select; you may give the Government or the Lord Chancellor a power of veto; the object is to select a person who will help the Judge; I had the appointment of chief clerks when the new system was introduced into the Court of Chancery, and my object was to find out persons who would be useful to me; I appointed two persons of whom I had little or no personal knowledge; one was a solicitor who had been a client of mine, but in that respect he was like many other solicitors, for I had had a fair share of practice; the other had been one of the Master's clerks; I selected them simply because I thought they would be efficient in the

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discharge of the business. Supposing it had been an appointment of a First Lord of the Treasury, and he had appointed any solicitor, I could not have objected; I could not have got them to work as these men now work with me; they are willing to work any length of time; to take papers home at night, and do anything I ask them to do to assist in getting through the business; there is that species of cordiality and harmony, which you could not attain if there were two opposite and distinct functionaries, and I do not believe you will get that harmony of action unless the Judge appoints his clerks.

642. Sir *E. Perry.*] You say that a veto is very ineffectual?—A veto is ineffectual, it only prevents an improper appointment, that is all.

643. A grossly improper appointment?—Yes.

644. *Chairman.*] Assuming that the only object, with reference to the appointments of chief clerks, is to prevent jobbing, and, as far as you can, to secure the selection of the most competent persons, do you think it would be a sufficient protection to the public to give the veto to the Lord Chancellor or to the Executive?—I think giving the veto to the Lord Chancellor is the better plan of the two.

645. If you give the veto to the Executive, you have a Parliamentary responsibility, have you not?—I doubt whether, practically, you have any responsibility at all.

646. Mr. *Walpole.*] In judicial matters is it not a desirable thing to avoid anything like political influence?—Yes.

647. *Chairman.*] With reference to the appointment of barristers to the office of chief clerk, I presume your opinion is founded upon the practice in England, and the duties which a chief clerk here has to perform?—Yes.

648. But, taking into account the very different duties which a chief clerk in Ireland would have to perform, supposing this scheme to be carried out, he would have to read the abstracts of title, and accurately note them; he would have to call the Judge's attention to the various points and difficulties which might arise upon the face of them, and he would have to assist the Judge in the great mass of administrative business which arises out of determining the claims of creditors to the money in court, their priorities, &c. Assuming that to be the general character of the business which the chief clerk would have to perform, do not you think it would be desirable that he should be a person having a considerable amount of legal knowledge and skill?—Yes, I think it would be desirable.

649. Are you aware that clauses 70 and 90 are taken from the English Act of 1852?—That may be.

650. I believe the English Act, from which those clauses are taken, goes a great deal more into detail?—Yes.

651. Mr. *Whiteside.*] With regard to making general orders, did you see in the evidence given before the Chancery Commissioners that there was the power of making general orders upon certain subjects in England formerly, and that complaints were made that the powers were not exercised, that for a period of five years the Lord Chancellor never made a general order, which he had the power to do?—That is so; practically, I think you would improve the form of the Bill if you continued and perpetuated the provisions of the Incumbered Estates Act, and if you took out the whole of part 6, which relates to the sale of settled estates.

652. Would you think it better to pursue the system which was recommended by the Commissioners in this country, reconstitute the Commission by one Act and reform the procedure by another?—I do not think that is a matter of great importance.

653. Sir *J. Graham.*] You would recommend all these clauses with regard to settled estates to be struck out of the Bill, especially the 151st, which is directly opposed to the principle of the Bill?—Undoubtedly.

654. Mr. *Whiteside.*] Would not you think it expedient, and, if I may use the expression, statesmanlike, so far as we can, now that a new principle is to be applied, to apply it to both England and Ireland alike. I am speaking with reference to the sale of unincumbered estates; is not that a new principle?—Yes.

655. Are not you considering a Bill for the registration of titles in this country?—None has been laid before me.

656. Might it not be advisable to postpone such a Bill until it can be considered whether you will invent facilities for the transfer of unincumbered land in this country?—It has been a favourite project of mine, which I have pressed upon

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upon many persons, to allow any person to apply to the Court of Chancery in England to look into his title, and give him a Parliamentary title, and sell the estate for him, only paying in the shape of fees some small per-centage, such as one quarter per cent., which would not be much for brokerage for that purpose; this if connected with a proper registration of the titles of estates so sold, could not fail to work a great improvement in the law of real property in this country. I firmly believe if the consolidation of the Incumbered Estates Court with the Court of Chancery works well in Ireland, that it cannot fail of being introduced into this country.

657. Do not you think that the new principle which you have pointed out might very properly be reserved for the consideration of its applicability to both countries?—The fact of reserving the consideration of its applicability, I think, would be practically to put it off to an uncertain day.

658. Then that Bill for the sale of unsettled estates offers?—Yes.

659. Had you not better have it in a separate Bill; do not you think it would be better to reserve it?—As a matter of drawing, I think it is more convenient in a separate Bill; I do not think that is a matter of any importance.

660. *Chairman.*] You have condemned the portion of the Bill which relates to settled estates, especially clause 151. I presume you have read that portion of the Bill?—I have read it.

661. As I understand, you have not read the Bill which passed the House of Lords last Session, came down to the House of Commons, was read a second time, passed through a Select Committee, and was only abandoned in consequence of its coming too late from the Select Committee to be brought again to the House, with its alterations?—I have not.

662. And you have not read this portion of the Bill that applies to the sale of settled estates except cursorily?—I have read this portion of the Bill.

663. You are aware that that portion of the Bill which appears to me to be very much misunderstood, is not at all connected with the sale of incumbered or unincumbered estates, but it is to enable parties claiming under settlements, where they find it for their interest to make certain modifications in a settled property, to go into the Court of Chancery, and, under the superintendence of that court, to make those alterations; for instance, it may be very advantageous to sell a portion of a settled estate, and bring the fund into court and re-invest it; that would be provided for, but as the case at present stands, it is impossible for the owner of a settled estate to sell an acre?—I do not condemn this portion of the Bill in the abstract, except one clause in it, 151st. I think it is not in its proper place in this Bill; I should prefer a separate Bill.

664. I will call your attention to why it was I incorporated it as a portion of this Bill. The Bill which came from the House of Lords included Ireland, but it was defective in this particular, at least according to our judgment, that the sale under it of a settled estate would not confer a Parliamentary title; it would be an ordinary sale in the Court of Chancery. Do not you concur with me in thinking that the sale of an estate without conferring a Parliamentary title would prejudice the estate. If you were to sell a settled estate, would it not be necessary to enable the court to give a Parliamentary title?—I do not quite see the necessity of it. You may direct that every estate sold in the Court of Chancery, which would be the effect, and ought to be the effect when you have united the two, should have a Parliamentary title; that is, every estate of a certain character; not the sale of a mere agricultural lease of course; but then it would not be necessary to make these provisions, relating to settled estates, a part of that arrangement.

665. Do you see any objection to its being a part, inasmuch as it is a cognate subject?—When I was first in Parliament there was a question whether Quakers could be allowed to sit in Parliament. We referred to the Acts of Parliament which related to it, and one very important clause was found in an Act of Parliament relating, amongst other things, to horned cattle; that was called a hotch-pot Act of Parliament. It was considered very objectionable to introduce, according to the old practice, provisions relating to distinct things, into one Act of Parliament. I think it is desirable to keep them apart and distinct. For some purposes you may unite them together; but it is desirable to avoid the character of a hotch-pot Act of Parliament.

666. Sir *E. Perry.*] We are informed that the Commissioners are in the habit of sitting four days a week in chambers, and two days a week in full court.

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During their sittings in chambers, which occupy the whole day, parties are able to apply to them; the readiest access is given to them to communicate on any part of the case; and they lay that down in page 6 as the main element of the success of their procedure. Do you think if Vice-Chancellors are appointed to do the same business, that they will be enabled to sit in chambers during the same period of the day, and to give the same facilities to the parties and solicitors who apply to them?—They will, by their clerks. At this moment my clerks have persons who are not solicitors at all, apply to them.

667. You think the Vice-Chancellor would give exactly the same facilities to the public as those which are afforded by the Incumbered Estates Commissioners?—His clerk would.

668. Mr. *Whiteside.*] I wish to call your attention to a passage in the answer of Mr. Rolleston, at page 52 of the Appendix, "I know many cases of hardship have arisen from parties having actually lost valuable interests in land by not being served with notice, or being otherwise informed of the proceedings to sell, as bearing on their interests; and I have had many cases before me exemplifying this; for instance, middlemen holding valuable interests under the owner by leases, and their tenants being the occupiers, the latter are the persons served with the notice and returned on the rental, and after the sale the middle interest is gone, as the occupier has too often a direct interest in not letting his immediate landlord know anything of the notice;" did that passage attract your attention?—Yes; but I should wish to have more evidence upon the subject.

669. In the sale of estates you are aware that the rights of every tenant as well as of the owners of the estates have to be fixed and adjudicated upon by the court?—Yes, I am aware of that.

670. In the case put, if the occupier be from year to year, and the person over him a middleman living in England, if he does not get notice of the covenant of release in England, his lease is gone by the settlement of the rental; does not that impose additional labour and responsibility upon the person directing and controlling the sale of estates?—It does.

Jovis, 13° die Martii, 1856.

MEMBERS PRESENT.

Mr. Solicitor-General for Ireland.	Sir James Graham.
Mr. Edward Ellice.	Mr. Henley.
Mr. Seymour Fitzgerald.	Mr. Kirk.
Mr. Henry Herbert.	Sir Erskine Perry.
Viscount Monck.	Mr. Grogan.
Sir Fitzroy Kelly.	

MR. SOLICITOR-GENERAL FOR IRELAND, IN THE CHAIR.

Charles James Hargreave, Esq., called in; and further Examined.

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671. IS there anything in the evidence you have given that you wish to correct?—If you refer to Question 182, you will find that I am asked, "If the tenant holds from the middleman, and not from the landlord, do you not require information from the tenant as to whom he holds under?" The answer which I gave to that question is, "Very rarely." I gave that answer upon the assumption that we were dealing with a case in which the tenant's interest is the interest to be sold. When that is the case, that we are selling a lease, we do not investigate in any way the landlord's title; the landlord may be a middleman or an owner in fee; but inasmuch as we do not purport to bind the landlord, we do not investigate the landlord's title. If, however, you speak of a case in which we sell the fee, then the tenants, when served with a notice, if they are candid and honest tenants, would disclose whether they hold under the fee or under a mesne interest.

672. Mr. *E. Ellice.*] Do you always take it for granted that the tenants are candid and honest?—No, we do not take that necessarily for granted; there are,

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of course, other means of ascertaining whether a mesne interest exists. A mesne interest, if it is of any value, will generally appear upon the register.

673. If it does not appear upon the register, you do not take any means to inform yourself of it?—Except the knowledge of the person who has the carriage of the sale; if he be the owner or the owner's solicitor, he is almost sure to know what is the nature of the leases upon the property.

674. If there should be any doubt upon the subject, would you not think it right to examine the tenant with respect to the tenure on which he holds his lease?—A case might occur in which that course might be desirable; I do not think it would often happen; the leases are generally well known.

675. You would take that course if you thought it were essential to including all the interests?—If we thought it conducive to the interests of justice we should adopt that course.

676. *Chairman.*] Is it not the case, according to the law of Ireland, that in order to get priority for a lease over 21 years, it requires to be registered?—I think the law is, that if the lease is for more than 21 years, or is made at a rent under two-thirds or some large fraction of the value, it must be registered in order to acquire priority over the sale.

677. And in order to maintain its priority over a subsequent lease?—Yes, or so as to bind a purchaser.

678. With your knowledge of Ireland, according to the general practice, the leases of the character described are generally registered, are they not?—They are.

679. Is not a part of your process towards effecting a sale, to direct registry searches?—It is; but those registry searches are not always made before the sale.

680. In the course of the searches, if there are leases of the character which have been spoken of, the search would disclose them, would it not?—The search would disclose them if they were registered.

681. In the ordinary course, would such information by registry searches be brought before the Commissioners in time to prevent the injury of selling the estate discharged of the lease?—It would not necessarily be brought before the Commissioners so as to prevent the sale of the estate discharged from the lease, but it would be brought before the Commissioners before the funds were distributed.

682. Then supposing you were selling the fee, or more technically speaking, selling the land, and it turned out after you had sold the land, discharged of all mesne interests, that there was a middle interest, the only remedy you would have to give the man who had lost his interest would be compensation out of the funds, would it not?—That would be the only compensation.

683. Although the formal searches may not be made before the sale, that is, the negative searches, is it not usual for the solicitor having the conduct of the sale to make a registry search, with a view to ascertain how the title stands?—He generally makes a common search, as distinguished from a negative search, for the purpose of enabling him to present a proper petition.

684. That would disclose a lease?—Yes, if it was registered.

685. Is not the only difference between common searches and negative searches, that the solicitor makes the common search, and the negative search is made by the registry officer, who is answerable for its correctness?—I think we are not using precisely the terms which are used in Ireland; the term which is used for the species of search which the solicitor makes is "hand search;" the common search is a peculiar kind of search made by the officer, for which, I believe, the officer is not responsible.

686. If the common search be made correctly, it equally discloses anything that affects the title?—No doubt.

687. In addition to making the searches, does not the publication of your notices, in reference to sales, on tenants, and otherwise, which publication is so very extensive, render very remote the danger that any one having a real interest will not get notice, so that he may come in and make his claim?—I think, practically, it almost excludes the possibility of any serious injury being done.

688. Have you of your own knowledge known any instance in which a valuable middle interest has been actually sacrificed by a sale?—I have not; I have known middlemen come forward, and pretend to have valuable interest when

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their interests were really of no value at all, and there was a good deal of reason to believe that they knew of the proceedings, and they were only hanging back for the purpose of coming forward with a claim for compensation.

689. Sometimes it may happen that they are not displeased to get rid of a lease, and then to come forward and claim compensation?—No doubt.

690. Have there been cases in which you have sold the fee simple of land discharged of leases, and leases have afterwards turned up, whether they have been of value or not?—I think some cases might have occurred; I cannot call any to mind at present.

If the Committee will have the goodness to refer to Questions 214 and 215, they will find that I stated that in an ordinary case I thought a sale might be had in two years, and that in a case of extreme difficulty I thought a sale might be had in three years. Upon consideration, I think I have overstated those periods; I would be rather disposed to say that in an ordinary case a sale might be had, I should think, in one year, and the case might be completely closed in 15 to 18 months; in a case of difficulty I suppose you might increase those periods by perhaps 50 per cent. On finding that I had made a statement, which occurred to me upon consideration to be an over-statement, I wrote to Mr. Longfield, and asked for his opinion upon the subject, and, if I have the permission of the Committee, I shall be glad to read what he says: "If a petition were presented in November for sale of an estate of, say from 500*l.* to 1,500*l.* a year, the estate might be sold, and the funds entirely distributed before the following summer vacation. A few such cases were wound up by me within that period last year; but the average time is more owing to the difficulty of making out the title and ascertaining where the deeds are; delays in procuring the required searches in the register offices; litigations with the tenants, &c.; these extend the average time to two years. The average is continually varying. An enormous mass of petitions were presented within the first two years; of those the most expeditious being first disposed of, and not having to compete with any arrears, made the average period between petition and sale appear very small; after a while the tardy ones came into account, with delay still further increased by pressure of business, and then the average period or duration of a matter appeared very long. Now the average is lessening again, and I see no difficulty in selling an ordinary estate, and distributing the purchase money within a year, where the parties desire expedition. There would be occasional delays caused by pressure of business, a blundering attorney, a sale adjourned for want of purchasers, or other accidental circumstances, but on the whole, I think the average period is decreasing and tending to the period above named."

691. Mr. *S. Fitzgerald.*] Do you mean to say that if a petition is presented, and it is not taken out of its turn, that a sale would take place in nine months, or in less than a year?—I do not think it could be done unless the case was taken out of its turn; but there is nothing that can be called the regular turn in these cases. In many of the cases the parties are very anxious to proceed with unusual expedition, because they have a great object in view, and in other cases they are not.

692. If a petition for sale were put at the bottom of the list of petitions which are presented unfiated, do you think a sale could take place within a year?—Not if it always remained at the bottom of the list.

693. If it were put at the bottom now, and you worked consecutively through each petition and fiated it, investigated the title, and so forth, just in the order in which the petitions had been presented, do you think any petition presented now could be got through in the course of a year?—What I wish to convey is this, that if a petition is presented now by a person who is anxious to press it forward, there are sure to be other cases which the parties are not anxious to press forward, and it would naturally happen that that petition acquires a kind of priority. If every one in the court was pressing their cases in the same way, it would not be possible to get a sale in the course of a year.

694. *Chairman.*] You do take petitions rather out of their order, according as they are ready, do you not?—The orders are made in rotation. The petitions are fiated as they come in, and after that it depends very much upon the vigilance of the attorney.

695. The circumstances of the estate may be such that even with great diligence you could not complete the sale within two or three years?—A case may occur, undoubtedly, which would require that period.

696. Sir

696. Sir *E. Perry.*] Master Brooke gives an account of the average of the sales in his office, and in that evidence he states that the average of ordinary cases is 17 months; are you aware of that fact?—I think he states that in his evidence; the number of sales in the Master's Office is exceedingly small.

697. Has not Master Brooke more than any of the other Masters?—He may. A considerable number of those sales are little residues of the estates of which the Commissioners sold the great bulk; there has been some little property left which did not fall within the jurisdiction of the Commissioners; probably it might be a lease of not sufficient duration to come within the jurisdiction of the Commissioners; in that case they went into the Master's Office; that constitutes one portion of the cases in which the Masters sell; another portion is the cases in which the Masters have sold, but have never conveyed; they were not able to make out a title in the Court of Chancery and the purchaser was discharged, and subsequently a petition has been brought into the Incumbered Estates Court and there the conveyance was executed.

698. Does that period of 17 months for a sale which is mentioned in Master Brooke's evidence, at page 39, include the distribution as well as the sale?—It would not in the Court of Chancery include the distribution; it would virtually include the ascertainment of the rights of the parties, because the report which determines the priorities is settled before the sale.

699. Taking the period required for the sale in your court of estates of a more complicated character than those sold in the Court of Chancery, what have been the comparative advantages of the two courts?—That is very difficult to say. I should think if the Court of Chancery had the same power of making out a title which we have, if a petition was presented in the Court of Chancery now, where they have no arrears of business of that character, and at the same time a petition was presented to us, I think, ordinarily a prior sale would be effected in Chancery; but that would be only in the first few cases.

700. Is not this the conclusion, that if it takes 17 months to get a sale in the Court of Chancery, and you take a shorter period, the advantage is with the Incumbered Estates Court?—I believe our practice is more expeditious than theirs.

701. Their sales are ordinarily sales of the residue of matters that have come before you?—They are partly of that character.

702. *Chairman.*] You sell at an early stage of the proceedings, do you not?—We sell at an early stage of the proceedings; we generally sell before the incumbrances are fully ascertained, because we are not bound to give the owner any opportunity of redeeming. In the Court of Chancery the owner must have an opportunity of redeeming before the sale, therefore it is necessary to take account of what is due.

703. In fact, in the Court of Chancery, the rights of the claimants upon an incumbered estate have to be ascertained, a report has to be made, and final decree obtained before the sale takes place?—That is so.

704. The sale may be described as the last important step in the Court of Chancery, whereas in the Incumbered Estates Court the sale is the first; is not that so?—Yes; in the Incumbered Estates Court the proceedings go on more concurrently than they do in the Court of Chancery; we are taking steps towards settling the rental, and reading the title, while at the same time, they are proceeding to ascertain what the demands upon the estates are.

705. Sir *E. Perry.*] You spoke of sale and distribution in your court in that extract which you read from Mr. Longfield's letter?—I mentioned both.

706. In round numbers, what is the average time in which a vigilant party could get a sale and distribution; I want to compare it with the proceedings in the Master's Office?—I think Mr. Longfield states a year; my own opinion is that it would be more than a year, from 15 to 18 months.

707. Therefore the comparison is a year in your court against 17 months in the Master's Office?—I am not prepared to say that that is exactly the fact.

708. *Chairman.*] What was the date of the first sale in your court?—I think it was in February 1850.

709. You commenced operations on the 2d of November 1849, and you had a sale as early as February 1850?—I think so; I am not sure that it was not January 1850.

710. Had you not the sale of a large estate of Mr. O'Connell, of Grena, in

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March or April?—I do not recollect the date; I know it was one of the early sales.

711. If it were not for the extreme arrear in the Incumbered Estates Court, would there be anything in the practice or the procedure of the court to prevent your having a sale now at the end of three or four months from the time of presenting the petition?—I do not think there would; if there were only one case in court, I could sell in four months, and distribute the proceeds of the sale in two more.

712. In fact, you are interfered with by the existing business?—Of course.

713. Sir *J. Graham.*] When did the distribution take place in the two sales which were first effected?—I do not know; I have no doubt it was soon after the sale; the O'Connell case was a very heavy case; there was a good deal of litigation, and I think a considerable period of time elapsed before the last distribution was made; I have no doubt, however, that we distributed the bulk of the funds in that case early after the sale. We are in the habit of distributing the bulk of the funds, withholding a sufficient portion of the purchase money to await the result of litigation with respect to unascertained claims.

714. You set aside a balance which you think sufficient to meet those claims?—A sum amply sufficient in any event to satisfy the claims.

715. *Chairman.*] Did not your advertisement for the first sale, the posting, as it is technically called, appear in the month of January 1850, before the court had been much more than two months in operation?—I think it is very likely.

716. Mr. *E. Ellice.*] I think before you were appointed one of the Commissioners of the Incumbered Estates Court, your study and practice in England had been specially devoted to conveyancing?—It had.

717. The Master of the Rolls stated in his evidence that he had recommended Mr. Longfield and yourself to the Government to be two of those Commissioners, from the great reputation which you both enjoyed in that particular branch?—Yes.

718. May it not happen that although a skilful conveyancer would be a good equity lawyer, and a good equity Judge, that a good equity Judge or lawyer in other respects may not be a skilful conveyancer?—The Master of the Rolls stated so in his evidence, and I am rather disposed to concur in that view.

719. The Master of the Rolls also stated that he should be very sorry, with all his experience as a Judge in this country, to undertake the duties of a Commissioner of the Incumbered Estates Court in Ireland, from his not being so perfectly master of the science of conveyancing?—He did; he rather intimated, I think, that it would be necessary for him to go back to be educated for a few months again before he assumed such duties.

720. Do not you think that considerable risk might be incurred in Ireland if the business, which has been so satisfactorily transacted by the Incumbered Estate Commissioners, in consequence of their skill in conveyancing, were sent to be transacted in a court where the Judges have not necessarily the same knowledge?—Unless the Legislature were satisfied that the Judges practically possessed that knowledge, it would be a monstrous thing to send business of that character to them.

721. As the equity Judges in this country, not being required to examine titles upon the sale of land, and to give judgment that the titles are satisfactory, can transact equally well all the other business of a court of equity without that practice, would not Judges of that description be generally appointed in Ireland?—The Judges appointed, I presume, would be generally selected from the Irish Bar.

722. Have not equity Judges hitherto been selected from their general knowledge of the equity branch of the law?—They have been selected from their knowledge of equity law, which includes of course real property law.

723. *Chairman.*] Could it possibly happen that you could have a gentleman to fill the office of Vice-Chancellor, that is, a Judge of the Court of Chancery, without his being a thorough master of the law of real property?—He must necessarily be a thorough master of the law of real property; he might not, however, be familiar with abstracts of title, but he would be able to dispose satisfactorily of all questions which were argued before him. I do not know whether he would, if he had had no practice upon the subject, be able to deal with cases of title arising upon the abstract where he had to deal with the matter *ex parte.*

724. Mr. *E. Ellice.*] You consider that the Master of the Rolls has a competent

tent knowledge of the law of real property, although he might not be a skilful conveyancer?—Yes.

725. *Chairman.*] Do you confine your answer to the Master of the Rolls not being thoroughly acquainted with the mechanical part of conveyancing?—I would not call it the mechanical part of conveyancing.

726. Am I to understand you to say that he would not be familiar with the form of an abstract of title, or competent to read, or deal with it, or discover its defects?—I think he would not be so competent, in that respect, as a person who had had special education and training in that branch of the law.

727. Mr. *E. Ellice.*] Might it not be very dangerous to commit the further power which it is sought to be conferred by this Bill upon the courts of equity in Ireland, to give Parliamentary titles to unincumbered estates, to Judges who are not at the same time skilful conveyancers?—Unless they become by their practice skilful conveyancers it would be a very dangerous thing.

728. *Chairman.*] Are you aware that according to the present system in the Court of Chancery in Ireland, in every sale of an estate there is a regular abstract of title prepared, which it is the Master's duty to examine?—I am not aware that it is the practice of the Masters to examine the abstract of title in the sense in which counsel for a purchaser investigates the title. I think the Master's duty is to see that the abstract is regular in form, and that there is counsel's opinion upon it stating that the title is a good one; I do not think he reads the abstract himself.

729. Is it not the fact that he does not look at the abstract of title; that he has counsel's opinion upon it, which he reads to see whether upon the face of it it presents a good title?—I am not able to say exactly how that is; I am under the impression that the Masters do not read the abstract of title.

730. Take the position of the Master of the Rolls in Ireland; one of the things which he has constantly to decide upon is this, when an estate has been sold upon the abstract of title, and objections are taken to the title, the parties come before him to decide whether the objections are good or not?—I am aware of that; I have no doubt that the Master of the Rolls and all the Judges in Ireland are able to dispose of questions of that sort; they have a particular point to decide which is argued by counsel before them, and their knowledge of the law enables them to determine it.

731. Mr. *E. Ellice.*] Those are contested questions, are they not?—Yes.

732. *Chairman.*] Do you know, according to the practice in Ireland, that a large portion of the practice of every Chancery barrister of any eminence is examining for his clients the abstracts of title which are from time to time laid before him?—No doubt that is the case. I am very far indeed from suggesting that there are not persons in Ireland perfectly competent to discharge the duties of such an office; nothing of the sort occurred to me.

733. Have you not had before the Incumbered Estates Court a great many abstracts of title, upon which counsel's opinion has been obtained?—Yes; I have constantly myself directed counsel's opinion to be taken upon them.

734. Are you aware that a great portion of the practice of Mr. Brewster, a most eminent conveyancer at the Chancery Bar, is examining abstracts of title and giving opinions upon them?—I was not aware of it; it may be so.

735. Will you explain to me how a man can be a Judge and can be a thorough master of the law of real property, and yet unfit to deal with the peculiar class of business which requires only a knowledge of the law of real property, and a careful reading of the abstracts of title which are laid before him?—I should be indisposed to say that he is unfit for it; I merely say that he is not so fit for it as a person who has specially devoted himself to that portion of business. A person who has been in the habit of reading abstracts and forming opinions upon long and complex deeds and circumstances of title, acquires a peculiar aptitude for discovering defects in the title, which a Judge who has nothing to do but to rule the particular points which are brought before him, would not acquire.

736. Sir *E. Perry.*] Is not conveyancing a kind of science in itself?—Yes; in England it has been made a separate branch of the law, and a considerable number of barristers devote themselves specially to that branch.

737. *Chairman.*] Is not the opinion which you have formed based upon what you suppose to be the practice in this country?—My experience is of course derived mainly from the practice in this country.

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738. Are there not a class of gentlemen who devote themselves to conveyancing?—Yes.

739. I believe there is no such class in Ireland?—I do not think there is any class, nor indeed am I aware of any individual barrister who does so. I think there are some men who are generally reported to have rather a desire to take conveyancing business than to do court business.

740. Are you aware, from your acquaintance with the country, that a part of the practice of every Chancery barrister of any eminence is the daily examination of abstracts of title?—I would not say the daily examination of abstracts of title; they advise on abstracts of title in the ordinary course of business.

741. Is not this the distinction between the two classes, that in England a Chancery barrister confines himself to Chancery business, and the questions which arise in every-day practice at the Chancery Bar, but in Ireland a barrister does not so confine himself, but he also performs the duties of a conveyancer?—The distinction rests pretty much upon that foundation.

742. In addition to the examination of abstract of title, is there not amongst the junior members of the Chancery Bar a considerable portion of business in drafting deeds?—Yes; settling deeds it is called.

743. Having regard to the practice which exists in Ireland, supposing a Judge to be selected from the Irish Bar, take for instance the Master of the Rolls; with a great practice, such as I have described, and a thorough knowledge of the law of real property, do you think he would not be fit to deal with this new business?—I think you may refer to the Master of the Rolls's own evidence upon the subject; if you turn to his evidence, you would infer from it that he does not think himself competent to take this class of business.

744. As I understand, your opinion is this, that in order to fill this office properly, the Judge should not be a mere equity lawyer; that he should not alone be acquainted with the principles, the authorities, and the practice of the Court of Chancery, but he should in addition be a practical conveyancer?—I think he should be able to become a practical conveyancer within a very short time.

745. Mr. *E. Ellice.*] Are you of opinion with the Master of the Rolls, that none but a thorough conveyancer is really to be trusted to say that this is an estate to which you may safely give a Parliamentary title, and also to say that no persons can make a claim upon it?—I am substantially of that opinion; I would use the term "conveyancer," not merely in the sense of a person who has actually practised as a conveyancer, but a person who is skilful as a conveyancer.

746. Mr. *Henley.*] With reference to a permanent system of judicature in the country, do you think it safe that a power of that kind should be given to any Judge, however well trained as a conveyancer he may have been, or do not you think it would be safer to leave it to the Judge acting upon evidence?—It would not be possible to administer a system of granting Parliamentary titles by a Judge acting entirely upon the evidence; he must, to a great extent, act *ex parte.*

747. Is it not the practice of the English Court of Chancery to refer questions of titles to estates to conveyancers appointed by the Court, who examine the titles, and give evidence upon them?—Yes; and I think it would be probably a very good system, provided the Judge did not consider that that at all released him from the responsibility of looking into the title; in England that course is adopted because there is a class of gentlemen who especially devote themselves to that branch of the law; in Ireland there is no class of persons from which a court of conveyancers or conveyancing counsel could be selected.

748. If there is no class of persons in Ireland specially trained to that business, and who do nothing else, I suppose there must be other lawyers in Ireland who, together with general business, devote much of their time and study to the titles of estates?—Yes; they take that business along with the other ordinary business that comes before them.

749. Do you think that any of those gentlemen are as competent to form an opinion upon the titles of estates as gentlemen who have given their attention wholly to the subject, and who are called conveyancers?—Speaking in the abstract, I should say that those who devote their attention exclusively to the subject would be more likely to be excellent conveyancers than those who take it with other business; at the same time, I have no doubt many barristers in Ireland are perfectly competent to deal with questions of title.

750. Take

750. Take the case of a report being made by a conveyancer to the Judge, in which the Judge's attention is called to particular points in the title, he would not be released from exercising his judgment as to whether or not the conveyancer had given sound reasons for the conclusion to which he had come?—I think that a Judge ought not, when conferring a Parliamentary title, to feel released from that responsibility.

751. Do you think, looking at the general law and practice, that Judges in Equity would feel themselves released from that responsibility?—I should consider it would become their duty to do this; I take it for granted that every Judge would do that which is his duty, and that would be only a part of his duty.

752. Sir *J. Graham.*] You think a Judge, trained as a conveyancer, would be more expert in investigating titles than a Judge who had only investigated titles as a part of his general business?—If we are talking of persons of the same ability, it would follow almost as a natural consequence.

753. Your attention has been called to the return of Master Brooke, who has effected 18 sales; you will see a list of them at page 39; according to the practice in the Master's Office, such as you understand it, is the investigation of the title by the Master different from the investigation of the title before the Judges of the Incumbered Estates Court?—I think it is quite different.

754. Will you point out the difference, as you understand it, between the investigation of the title by a Master, as hitherto exercised, contrasted with the investigation of the title by the Commissioners of the Incumbered Estates Court?—I think all that the Master does is to see that the abstract is correct in point of form, and that there is the opinion of counsel upon it, certifying to the effect that a good title is deduced, or stating what particular points ought to be attended to before that title is made satisfactory; but it very frequently happens that a Master approves a title, and a sale takes place, and then the purchaser's counsel finds a defect in the title, and the purchaser is discharged from the sale; that is exceedingly common. With the Incumbered Estates Commissioners that particular circumstance of the discharge of a purchaser can never happen, because necessarily he gets a Parliamentary title; therefore what the Commissioner does is himself, personally, after having had the abstract of title noted by his examiner, to read the abstract of title with the aid of those notes, to direct the necessary searches, and to exercise his own judgment upon every question that arises.

755. Is not the investigation of title by the Commissioners of the Incumbered Estates Court, practically, more searching than the investigation of the Masters?—I think it is, and I think it ought to be.

756. Is there not this difference in the result, that an error made by a Commissioner of the Incumbered Estates Court is irretrievable, and an error made by a Master is subject to a re-hearing?—An error made by a Commissioner of the Incumbered Estates Court upon a question of title is not necessarily irretrievable; because if the party, before the sale, comes forward and makes his claim, then his claim, if it turns out to be a sound one, is allowed; and if at any time before the distribution of the funds he establishes a title, he can get, not exactly the property, but he can have compensation for its value out of the purchase-money.

757. Is the balance reserved, after partial distribution, always sufficient to meet dormant claims of that description?—No; I assume that the party comes forward within a very reasonable time; because we undoubtedly distribute the whole of the funds as soon as we possibly can.

758. If an errer unfortunately had been committed, although the party should establish the validity of his claim, the funds not being forthcoming, full equity cannot be done to him?—I think then he is necessarily injured; his claim, however, generally speaking, would be something that would appear upon the registry search.

759. Sir *E. Perry.*] I see Mr. Longfield, at page 48, states that the difference between your sales and the Masters' sales is, that in your case the Commissioners really investigate the title themselves, but that in the case of Masters' sales the Masters in Chancery do not investigate the titles themselves?—I believe that is the case.

760. Is it not the course, both in this country and in Ireland, in a sale in the Master's Office for the Master to hand over the investigation of the title to the counsel and solicitors of the parties?—He does.

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761. Therefore there is not the same investigation by the Master, and you have not the same security of the Master's judgment upon the title as you have on the Commissioner's investigation?—There is very little of what you would call judicial investigation of the title in Chancery.

762. You have been asked as to the conveyancing knowledge required in the Commissioners. If Vice-Chancellors are to be appointed, would it not be the duty of the Executive always to select the best equity practitioners, and are not they the men who make themselves the best known for their advocacy?—I am not prepared to say what the duties of the Executive would be; that circumstance of course would influence them very largely indeed.

763. Has it not been constantly the case, both in this country and in Ireland, that the finest equity lawyers have not been what are called conveyancers?—That is the case.

764. If such men are appointed as have hitherto been appointed, and the incumbered estates business is referred to the Vice-Chancellors, is it not probable that the Vice-Chancellors would refer this matter of the investigation of titles to their chief clerks?—If the Vice-Chancellor found that he was not able to do it himself without excessive labour he would do that. I assume, however, that proper persons would be appointed, and that they would do their duty.

765. I am talking of first-rate equity lawyers who are no conveyancers, but men eminent in advocacy; if that is so, and if such men are appointed Vice-Chancellors (and it would be very hard upon the profession if they were not), does not it seem to you to follow necessarily that they will be obliged to refer these matters of investigation of title to their chief clerks?—I think that must follow; if they felt themselves incompetent to deal with the subject themselves, they would of course be more likely to refer it to their chief clerks.

766. I see that Mr. Longfield, the brother of the Commissioner, states that the investigation of abstracts, and so on, is a most irksome business. "Every barrister could state, that of all his business, the most laborious and tedious, that requiring most care, and involving the heaviest responsibility, is advising on titles." If an equity lawyer of 50 years of age were appointed to that branch, would it not be an extremely irksome part of his business to begin again to make himself master of it?—It would, if he had not been in the habit of dealing with questions of that sort, be a very irksome business. It is the kind of business which the Commissioners have been in the habit of doing privately at home; which they are not able to do during the daytime when they are ordinarily engaged in hearing motions.

767. This court which is proposed to be made permanent has not anything similar to it in the world, with the power of granting Parliamentary titles to estates without any litigation?—I am not aware of anything of the sort except the West India Incumbered Estates Act, which was passed last Session, but which has not yet been brought into operation.

768. Being an anomalous court, which is only justified by its great utility, does not it form the foundation of your court that the most eminent men versed in this particular science should be appointed to superintend it?—If they had no other functions to perform, then you would have regard peculiarly to their conveyancing knowledge; if they have other duties to perform, then persons must be selected who are the best adapted to the whole of those various classes of business taken together.

769. Would not there be a danger of selling one man's property to pay another man's debts, if the duty of investigating the title is transferred from the Judge to the chief clerk?—I think there would be. The chief clerk might, however, be as competent a man as the Judge, but that would be an accidental circumstance.

770. Throughout your evidence I observe that you always qualify the propriety of transferring the Incumbered Estates Court to the Court of Chancery, by supposing that the same investigation of title would be given by the new Judges as that which has been given by the Commissioners?—My own opinion is that the examination of the title by the Judge ought to be continued as a part of the system.

771. If that examination of the title by the Judge is diminished, in your opinion it will impede the safe working of the court?—I am disposed to think it would.

772. Mr. *E. Ellice.*] Is not the examination which takes place in your present

sent office by your examiner much the same, except that it is more expeditious and less expensive than it is by a reference from the Court of Chancery to a Master in the Court of Chancery?—No; indeed I do not think there is much analogy between those two things. What the examiner does is something of this sort; he first sees that the abstract of title is brought in in a proper form; he then vouches that abstract, as it is called, that is, he examines the abstract with the title deeds or copies, in order to see that all the material parts of the deeds are fully stated upon the abstract. In my office the practice has been for the examiner to make a kind of epitome of the abstract of title; to enter in a book a note of each deed that appears upon the abstract; then at a subsequent period, when I have time and leisure, I take up the note, and by that note I am able to deal with the abstract of title in a much shorter space of time than I could read and consider it without the note.

773. In what respect does that much differ from the process before the Master?—The process before the Master is different; I am rather under the impression that the Master does not read the titles at all; I am not aware that he does.

774. Does not the Master report the title, as he has examined it, to the court, and does not the court proceed upon his report?—I believe that is so.

775. Therefore all the time and expense which is necessary in consequence of the reference from the court to the Master in that case is saved by the proceedings that take place before the Commissioners?—I think you are rather considering the case of a suit for specific performance, where there has been a contract for sale; in that case the court refers it to the Master to ascertain whether a good title is shown or not; in the Court of Chancery, in an ordinary case of the sale of an estate by incumbrancers, I am not aware that there is any special reference to the Master on the subject of title; it does come before him in the natural course of his business under some general rule, and he has to certify that the title is satisfactory, but he does not give that certificate from a personal examination of the abstract of title.

776. Sir *J. Graham.*] Is Mr. Longfield's practice the same as yours with reference to investigating the title?—I believe it is; I am not aware of any substantial difference.

777. You would say that he personally investigates the title in making an ordinary sale?—Yes.

778. You have sold estates in Ireland which have realised about 17 millions of money, have you not?—We have.

779. It is stated by the Commissioners in their report, that, on the whole, the business has been transacted to the satisfaction of the community in Ireland; do you think, or have you reason to believe, that the personal investigation of the title by Mr. Longfield and yourself has been one of the causes of that satisfaction, or that you would have given equal satisfaction if you had acted upon the opinion of chief clerks?—I think the opinion of the public would have been much the same if we had acted upon the opinion of chief clerks; I do not think the public are at all anxious upon the subject of dormant interests, or that class of rights which are in danger of being extinguished by Parliamentary titles.

780. You think therefore that the public are indifferent to the administration of justice or equity?—I would hardly call that feeling indifference to the administration of justice or equity.

781. *Chairman.*] The purchaser is perfectly satisfied with the operation?—Yes; it is there where the advantage is.

782. Allow me to call your attention to Master Henn's evidence, at page 33, in which he gives a statement of the practice of the Court of Chancery; "The time always allowed for payment, unless where the respondent consents to a shorter period, is three months; and if the money is not then paid, the solicitor for the petitioner proceeds to make out the abstract of title, which he lays before counsel, who gives his opinion, and directs the necessary searches; when the searches are completed, which not unfrequently occupies a long time, the case is again submitted to counsel for his opinion, having regard to the different acts that may appear upon them, particularly the registry searches; if, in counsel's opinion, the title is satisfactory, the solicitor for the petitioner then takes out a summons for the Master to inspect and approve of the title, and if, on inspection, he sees no reason to dissent from or doubt the correctness of the opinion, he, upon the production of an affidavit that all the deeds necessary for evidencing

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the title are lodged in the Master's Office, or are within the procurement of the solicitor, signs a certificate that he has inspected the abstract, and that it is, in his opinion, a compliance with the 138th General Order of the 27th March 1843. If the Master has any doubt as to the opinion, he confers with counsel, and if the counsel, either then or in his original opinion, states that any conditions of sale are necessary, a summons is issued for the Master to settle conditions, and not until they are settled and approved of by him does he sign the necessary certificate." That is the evidence of Mr. Henn, who has been 36 years a Master in Chancery?—I believe that is substantially what is done; it is obvious that it is all done upon the certificate of counsel. Although he says he inspects the abstract of title, I do not believe for a moment that he reads the abstract from beginning to end with the view of considering it and forming a personal opinion upon the question of title.

783. You are aware that a practitioner in Ireland in the Court of Chancery does not confine himself strictly to Chancery practice?—No.

784. Can you tell me whether, in your judgment, any advantages flow from what I may call the Irish system, that is, a barrister not confining himself to one line of practice?—I think there is some advantage in a barrister practising also at the Common Law Bar. I think going circuit is, to some extent, an advantage, although there are some points in which I consider it a disadvantage. On the whole, I do not think it is desirable for barristers to commit themselves to limited fields of operation.

785. Do not you think there is an advantage, that a person who is likely to fill the position of an Equity Judge has not alone practised in Chancery, but that he has acquired in early life, from settling drafts, perusing abstracts of title, giving his opinion upon them, and having his clients deal upon the faith of that opinion, a knowledge of the practical part of conveyancing?—He does acquire that knowledge, but not to the same extent that a conveyancer in England in extensive practice would do.

786. Does a conveyancer in England practise in court?—No, he would not be called simply a conveyancer if he practised in court. Many persons are both conveyancers and equity barristers.

787. Supposing that you were selecting a Vice-Chancellor for the Court of Chancery, would you think it better to select a mere conveyancer who had not practised in court, or a gentleman who had practised in the Court of Chancery, and had, at least to a certain extent, a knowledge of conveyancing?—I think, in the abstract, it would be desirable to select a person acquainted both with the practical part of conveyancing and with a perfect knowledge of equity practice. I take it for granted that every conveyancer and every practitioner in the Court of Chancery understands all the principles of equity.

788. Mr. *E. Ellice.*] If there were a difficulty in finding a gentleman equally versed in all the practice and rules of equity, and a skilful conveyancer, with a view to the sale of unincumbered and incumbered estates, you would prefer a Judge who, beyond a general knowledge of equity, should be particularly well versed in the science of conveyancing?—I should. I think the practice of a court is very soon acquired. A Judge of moderate abilities would soon acquire all the mere forms of practice.

789. Mr. *Henley.*] Would not the knowledge which has been referred to be requisite in the distribution of the proceeds of the sale?—The proceeds of the sale, of course, are to be distributed upon principles of equity. A conveyancer himself as such would require to be familiar with all the principles of equity. The titles he is constantly perusing depend, for their validity, upon those principles. All he would be necessarily deficient in would be the practice and routine of the court.

790. You have stated, that in your judgment a man who devotes all his attention to conveyancing would naturally know more about it than a man who practised at the Equity Bar, and directed some of his attention to conveyancing. Would not the converse be true, that a man who directed all his attention to conveyancing would not be so perfectly acquainted with the rules of equity and with other matters as the man who directed more of his attention to them?—If by "rules," you mean rules of practice, that is so. If by "rules," I am to understand the principles of equity and jurisprudence, then I do not see that it is so. It would appear to me that a conveyancer must be a person versed in the law, and must know its principles as well as a barrister practising in court.

791. Do

791. Do not important differences arise upon the distribution of the funds?—Undoubtedly, precisely the same questions which would arise upon the investigation of titles. It is impossible to draw any sharp line of distinction.

792. Sir *E. Perry.*] Practically the distinction is, that a conveyancer is more of a sedentary equity lawyer than a practitioner in court?—In this country a conveyancer generally practises in chambers. His practice consists in the preparation of deeds (which in this country is called drawing deeds, and in Ireland merely settling deeds), and perusing abstracts of title and advising on cases; in relation to those cases he must be presumed to be as good an equity lawyer as any other barrister.

793. Mr. *Kirk.*] Would not that very practice rather tend to diminish the capacity of the human mind for general business?—In the abstract, I should be disposed to say that it does. I am not very favourable to persons confining themselves to particular branches of the law, or even restricting themselves too much to the single study of the law.

794. You think a variety of knowledge must enlarge the capacity of the human mind?—It is for that reason that I support the transfer rather than advocate the preservation of a separate court; I do not think it is desirable that a Judge should be confined to any particular field; I think he would be in some degree in danger of being an inferior Judge, even in that particular field, more so than if he had liberty to range over the whole extent of the law.

795. Sir *E. Perry.*] Do you think that habits of advocacy in court fit a man for the office of Judge?—I do not know that they fit him for the office of Judge; at the same time, I do not see that they unfit him. It is not so much the practice of advocacy as the knowledge he acquires in the course of that practice that qualifies him for a Judge.

796. Mr. *Kirk.*] Referring to what you have been asked respecting the continuance of the Incumbered Estates Court; I believe that very soon after the petition is presented to your court you require all the deeds to be brought into court?—We do; we have an order or a notice served upon every person who there is reason to suppose possesses the title deeds; he generally at once lodges all the title deeds except those which he holds as his own security, which we allow him to retain.

797. You require those parties who claim as against the property to lodge wills and mortgages, and things of that kind, do you?—Yes.

798. What provision is there for the safe keeping of those deeds in the Incumbered Estates Court?—There is an office specially for them.

799. I mean with reference to their safety from fire?—They are kept in vaults in the house in which the office of the Incumbered Estates Court is situated, in the lower basement story; they are kept in tin boxes.

800. It appears by the evidence of Mr. Welsh that you have a record room, capable of containing 1,162 boxes, and you seem to have 2,050 boxes, which necessarily contain the title deeds and all the valuable documents relating to the 1,660 cases which are before the court?—They do.

801. In the event of a fire taking place in a house adjoining to the court, what security have the public that those deeds will be preserved, or is there any?—The public have no security that they would not be burnt if a fire took place.

802. Does not it occur to you to be one of the most dangerous things imaginable?—There is a certain amount of danger in it. With regard to all the cases in court which have been actually disposed of, the destruction of the deeds would be of very secondary consequence indeed.

803. I presume that those 2,050 tin boxes contain the title deeds of property in court yet unsold?—No, a great deal of those are the title deeds of properties that have been sold, because after the sale the title deeds become practically valueless. No one has any interest in taking them out of the court.

804. With reference to parties having access to the deeds, how is that generally managed; in whose presence is a solicitor allowed to have access to any title deed?—If he is inspecting the deeds in the office it would be in the presence of an officer; if a solicitor is inspecting, I should not think it necessary always that he should do it in the presence of any one. The solicitors who have the conduct of proceedings have a right to take the deeds for the purpose of preparing the abstract.

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805. Without signing a receipt for them?—Not without signing a receipt, and an undertaking to lodge the deeds within a certain time.

806. Suppose a solicitor or a solicitor's clerk went to one of those boxes?—He could not get at them without an order from the Commissioners.

807. Who is the party present when he inspects those deeds?—The officer of the court.

808. Is it Mr. Welsh or the porter; because I am informed that it is the porter who is present?—If it has been so stated, I am not prepared to deny it; I do not know the fact.

809. You have no means of preventing the abduction of a deed, or a mortgage, or a bond, except the occasional presence of the porter?—If an improper person was permitted to have access to the deeds, it would be difficult to prevent him purloining the deeds; but I have never heard of an instance of a deed having been purloined.

810. When notice is served for a motion, is it usual for the order to be written upon the back of the notice at the moment?—I do not know what is usual with the other Commissioners; with regard to myself, I always endorse my order upon the notice, and my examiner, generally the same day or the day after, enters it in what is called the Ruling Book; in fact, it is a minute of the order that is made.

811. It is entered in a book?—It is.

812. *Chairman.*] You have no officer to take down your orders?—No.

813. Mr. *S. Fitzgerald.*] Is not that the same course as the course pursued by a Judge in chambers, to endorse his minute, and upon that the order is drawn up in full?—I should suppose it is. I do not think there is any very great advantage in having a registrar in chamber. I can write down my order almost as soon as I can conceive it.

814. Mr. *Kirk.*] A good deal has been said in London with reference to the seal of the Commissioners; at what time and place is the seal affixed to the deed giving the Parliamentary title?—It is affixed by the secretary or registrar, after the engrossment of the deed has been compared with the draft by the Commissioner's examiner.

815. Is the seal affixed in open court?—No, it is affixed in the office; the seal is a fixed machine which cannot be removed.

816. Who has the custody of the seal?—The secretary.

817. Is it possible for any person but the secretary to have access to the seal?—The secretary and his clerks; I am not aware that any other person could get access to it except by some surreptitious process.

818. What guards have you that the seals cannot be used surreptitiously?—I am not prepared exactly this moment to say how that is, except that the seal is in the custody of a responsible officer. The mere use of the seal is of little or no importance; no document could be forged by the use of the seal unless the secretary's signature is to it. If anybody wanted to affix the seal to a conveyance, he has nothing to do but to get one of the innumerable notices which the Commissioners issue to tenants, cut off the Commissioners' seal, and place it upon the conveyance.

819. *Chairman.*] Is the same seal used for authenticating notices and for sealing the conveyances?—All the notices served upon the tenants of the estates are sealed with the same seal. By the Act of Parliament all mere copies of deeds which are to be put in evidence are sealed with the same seal.

820. The Act directs that they are to be under seal, and there is to be one seal?—Just so; the seal after all is a mere piece of rubbish; in my opinion it is a mere superstition to have a seal at all.

821. Mr. *Henley.*] Is there any means in the Incumbered Estates Court of furnishing a return of the amount of property out of the 17 millions which has been sold that has been incumbered upon the purchase?—The Commissioners would have no means of knowing that. They would sometimes be able to discover it if the incumbrancer himself lodged the purchase money in court; but of course, as a general problem, it would be mere speculation.

822. What proportion of the land that has been sold is really free of incumbrance there is no means of ascertaining. If estates to the value of 17 millions have been sold through the court, you cannot tell what has been paid for by money down, and is therefore free from incumbrance, or what has been purchased subject to a great incumbrance in part of the purchase money fixed upon the

the estate at the time of purchase?—I do not think we could give any authentic return upon the subject; but, judging from the great facility with which the purchase money comes in, I should be apt to believe that there is not a very large amount of borrowing upon the immediate occasion of purchases.

823. Do you think there is 10 per cent. of borrowing?—More than 10 per cent. probably, but it is quite conjectural; I could not venture to give an opinion.

824. Does the borrowing go as far as 20 per cent.?—I could not draw the line at all. I do not think there would be any harm in it if it was half.

825. Mr. *Kirk.*] Who appoints the officers of the Incumbered Estates Court?—The Commissioners, with the sanction of the Lords of the Treasury.

826. Do those officers appoint their clerks, or do the Commissioners appoint them?—The Commissioners appoint all their officers.

827. Have you any knowledge of whether they work cordially together, or the opposite?—There may have been occasional dissensions. I am not aware of anything of importance. The public have never suffered from want of cordiality.

828. You think they act cordially together?—I think they do.

829. Although the officers are not appointed by the clerks to the Commissioners, but you appoint them, they act cordially together?—I believe they do.

830. How long had you practised at the Bar before you were appointed a Commissioner of the Incumbered Estates Court?—I was called to the Bar in Trinity Term, 1844; I was appointed a Commissioner of the Incumbered Estates Court somewhere about July 1849; therefore I had been at the Bar a little over five and a half years, before my appointment.

831. Was it the Chancery or the common law courts before which you practised?—I practised exclusively as a conveyancer.

832. Are the Committee to infer that you did not practise at the Bar at all?—All conveyancers in London practise at the Bar; they do not necessarily plead in open court.

833. In fact you did not practise as an advocate at all?—I did not.

834. *Chairman.*] You have mentioned that all the officers of the court were appointed by the Commissioners; was Mr. Flanagan, the Master, appointed by the Commissioners?—He was appointed by the Commissioners, undoubtedly; I believe there was some arrangement by which it was understood that he was to have the office; I do not know what it was, but he was in form appointed by the Commissioners.

835. He was not really selected by the Commissioners?—I have no recollection of ever exercising a personal judgment upon it.

836. I believe it would be impossible to have a better officer than Mr. Flanagan?—Quite impossible.

837. Mr. *S. Fitzgerald.*] What duties do you propose to give to your chief clerk, which are not now performed by your examiner?—On the last day I was here, the Committee were about to ask me what the particular duties were which the chief clerk ought to have; it occurred to me that it would be better to put down those heads, and with the permission of the Committee I will make my observations upon them. The observations apply principally to cases of sales, that being a portion of the business which I know with the most detail; that will be sufficient to explain the principle upon which I should be disposed to give duties to the chief clerk. The chief clerk might fiat petitions; I take it for granted he would act upon such general principles as the Judge would have laid down for his guidance, and when any case of difficulty arose he would take the opinion of the Judge upon it. The great responsibility on fiating petitions would be to see that proper persons had notice, and wherever a doubt suggested itself to the chief clerk, I suppose it would be his duty to bring it before the Judge.

838. *Chairman.*] By fiating do not you mean the conditional order?—Yes.

839. Mr. *S. Fitzgerald.*] He would direct what parties should be served with the conditional order?—Yes. I do not at all say that the Judge ought to entrust that duty to his chief clerk. It is a matter very much for the Judge's discretion. I think the chief clerk might make the orders for the lodgment of the title deeds, and at the subsequent stages of the case he might make an order for the giving out of those title deeds to purchasers and to the persons entitled to them. I think the chief clerk might see to the service of the notices

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upon the tenants, and he might decide all questions which would arise relating to tenancies except where the parties desired to be heard by counsel, in which case, I think, they would be better disposed of probably by the Judge in chambers. It would be the chief clerk's duty, I think, also (which is now one of the duties of the Master) to consider the applications for valuations and surveys, and to make the proper order upon them. I think I should make it a part of the chief clerk's duty to settle the rental, and to examine for that purpose the leases and agreements. His previous knowledge of the title would enable him to introduce proper conditions of sale wherever they were required, and to see that the property was sold subject to annuities and permanent charges wherever such charges existed. Of course, in settling the rental a sort of *quasi* judicial function would devolve upon him of dividing the property into lots, and where the parties disagreed as to the mode in which the sale should take place, to decide how the property should be divided into lots. I think one of the duties of the chief clerk would be to approve of the draft conveyances. Whether it would not also be desirable that they should be read by the Judge is another question. I think the Judge should make a habit at all events of cursorily perusing them, so that he may see that no bad practice was growing up without his knowledge.

840. Do you do that now?—I do that now; the Judge cannot personally see that every tenancy is properly stated in the rental. The principal object of the Commissioners in inspecting the conveyances, I presume, is to see that they are correct, and from time to time that no bad form or bad practice is taking root in the system. According to the system which I have generally adopted, it would be the duty of the chief clerk to make a kind of epitome of the abstract of title, for the purpose of assisting the Judge in reading the title; of course that is a matter which depends upon the habits of the Judge; another Judge would read the abstract of title better than an epitome. It is a matter depending upon the personal ideas of the Judge himself. It would be the duty of the chief clerk to vouch the abstract with the title deeds, and to take the directions of the Judge in the event of the title deeds not being forthcoming, supposing they were lost or destroyed, or there was no evidence except a copy, or a mere copy from a memorial, which very often occurs. It would be his duty in cases of partition or exchange of property to settle the order, and to peruse the abstract so far as was necessary for settling the order. He might take upon himself the giving of the necessary directions for the taxation of costs, and he might ascertain who would be the parties most interested in attending before the Taxing-master upon the taxation. He would also have on occasional references to dispose of minute inquiries upon little questions of fact; accounts to be taken, and accounts to vouch, and things of that sort, such as are at present done by Masters in Chancery, and those he might with advantage do to relieve the Judge; of course in such cases I assume that the principles upon which the accounts have to be taken have been previously decided by the Judge, as agreed upon by the parties. It would be also an important duty of the chief clerk to examine the searches when they came in, that is, that all the deeds returned upon the search were properly examined to show that they did not now affect the title, or he would have to discover who the persons were who claimed under those old deeds, and have them served with notices. If the Judge sitting in Chambers required a registrar, which I am not much disposed to think he would, one of the chief clerks might from time to time act in that capacity. It would be the chief clerk's duty in cases which were falling into arrear, where the parties were not prosecuting them with reasonable diligence, to bring those cases under the consideration of the Judge. When the case reached the stage of settling the schedule of incumbrances, I think the chief clerk, although he could not hear the schedule of incumbrances, might prepare it in an *ex parte* way from his knowledge of the abstract of title; from the information furnished by the searches, from the information which the petitioner's solicitor would have, he might prepare the draft schedule of incumbrances in such a form as to relieve the Judge from a great deal of labour that now devolves upon him, upon hearing the schedule of incumbrances; in fact, he would prepare it in a neat form, ready to lay before the Judge; those are the principal duties which occur to me might be performed by the chief clerk, confining my attention almost entirely to the class of business which we have hitherto dealt with; there would devolve upon the Judge a great many other classes of business; he would have the administration of the real and personal

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estates of deceased persons, and I can imagine a great number of things which a chief clerk would relieve a Judge from; in fact, in the administrative business the chief clerk might do everything but decide points of law.

841. Mr. *S. Fitzgerald.*] Do you contemplate that this business, which you propose to commit to the chief clerk, should be under the review of the Judge himself?—I think the parties should be entitled to take the opinion of the Judge wherever they required it.

842. It would not be reviewed by the Judge unless it was brought under his notice by the parties to the suit?—I think the chief clerk ought to make a habit of consulting the Judge whenever there was the least difficulty to be disposed of.

843. If it was not a matter of difficulty in the chief clerk's opinion, and if it was not brought under the notice of the Judge by the parties, would you not give the chief clerk the absolute control of those various matters which you have specified?—I think so; I do not see why the Judge should entertain them if he was not required to do so.

844. Are not those the duties which are principally performed now by the Master and the examiner of each Commissioner?—Yes.

845. Do the examiners or the Masters of the court now act in the independent manner you propose that the chief clerk should do, or do they perform all their duties subject to the review of the Commissioner?—The examiner does all his duties subject to the constant review of the Commissioner. The Master acts pretty much as independently as a Master in Chancery; he is not communicated with otherwise than by orders and reports. I think the Master in his evidence states that that is an inconvenient course, and specifies particularly that nearly all the business which he does could be done much more satisfactorily in the Commissioner's chamber by a chief clerk.

846. When you said in your former evidence that you thought it desirable that the attention of the Commissioner should not be taken off from the ministerial part of his functions, will you state what other proceedings in a cause you would describe as ministerial, and to be kept under the control of the Commissioner, which are not enumerated in the list you have just given?—None at present occur to me; I have no doubt upon further consideration other points would suggest themselves.

847. In fact, if you gave all those duties to the chief clerk, would you not be leaving duties to the Commissioner almost entirely of a judicial character?—I think you would be very much doing that; I am assuming however that all those things are to be done under the immediate supervision and control of the Judge.

848. I understood you to say just now that unless they were brought before the Judge by the parties or by the chief clerk himself, that the chief clerk was to have entire jurisdiction over them?—He would practically, I think, have that jurisdiction; I assume, as was mentioned by the Master of the Rolls in his evidence the other day, that the Judge and the chief clerk are working together with perfect harmony, not performing their duties merely *qua* duties, perfunctorily; that the chief clerk would be in the habit of advising with the Judge not merely upon individual cases, but upon the general business before him.

849. *Chairman.*] Would you not give the parties the simplest right, if they differed from the chief clerk, of going before the Judge?—Yes. If even in such a matter as the division of an estate into lots any of the parties were dissatisfied with the ruling of the chief clerk upon that point, I think they ought to have the right of bringing it before the Judge.

850. Sir *J. Graham.*] You would not propose that the transfer of duties which you recommend, to the chief clerk, should be peremptorily fixed by Act of Parliament, or by any order of court?—Not by any means. I merely throw them out as things which would probably be the duties of the chief clerk.

851. You would have to vary the practice with your experience, as circumstances arose?—Yes.

852. Any fixed rule of practice, whether by statute or by order of the court, would, in your opinion, be inconvenient?—I think it would be mischievous.

853. The principle being, that the Judge should be responsible for everything which was done by his chief clerk?—I think that is the leading principle which ought to guide us.

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854. With reference to that principle, do you think it expedient that the power of the choice of a chief clerk should be vested anywhere but in the Judge?—I think the power of selection should be with the Judge; it might be very well to leave a veto with the Lord Chancellor or the Lord Lieutenant, for the purpose of checking any abuse.

855. In your opinion, the Judge being responsible, as the principal, for all the acts of his chief clerk, he ought to have the selection in the first instance?—I think he ought.

856. Are you of opinion, if there be an effective veto, that any qualification of a barrister of six years' standing, or a solicitor of 10 years' standing, is an expedient limitation to the choice?—My own impression would be decidedly against any limitation; you might exclude very competent persons, and would include many persons who are not fit for the office.

857. What you would recommend would be, to vest the choice in the first instance in the Judge, with an effective veto on the part of the Lord Lieutenant or the Lord Chancellor to check any abuse?—Yes; I think it should be an effective veto, and not a formal veto.

858. Sir *E. Perry.*] The Master of the Rolls said that the Lord Chancellor's veto was not the proper veto?—I did not hear him say so.

859. Sir *J. Graham.*] Is it your opinion, if an effective veto were confided to the Lord Chancellor as a solemn trust, that the Lord Chancellor would abuse it?—I should think not; I know of no reason why he should; he would understand that it is a solemn trust, and that it is not vested in him merely for the purpose of enabling him to check grossly improper appointments, but that he ought to see in every case that reasonable care has been taken to get the best men.

860. Will not a latitude in the choice impose on the Lord Chancellor the duty of additional care in exercising his veto?—Yes.

861. *Chairman.*] Supposing the Vice-Chancellor either dying or resigning his office, do you contemplate that his successor should appoint new chief clerks, and remove the old ones?—No, I think not.

862. Then the Vice-Chancellor coming into office would not feel under any responsibility for the acts of the chief clerk?—I do not say that he would not be under any responsibility, but of course he might not work quite so harmoniously with a clerk in office as he would with a clerk of his own appointing; in the matter of responsibility, however, there would be this difference, that the chief clerk would be a person that he found in the office, and not a person thrust upon him by the Government.

863. The case I put is, that there would be neither responsibility in the Judge nor in the officer acting under him; that is, Parliamentary responsibility?—I think the Judge should consider himself responsible; and with the view of exercising that responsibility, it might be necessary for him to devote more time to the administrative functions, than would be necessary if he had a chief clerk of his own appointing.

864. Sir *J. Graham.*] In your opinion, the power of removal for cause shown should be left open to the Judge?—I think it should; it is one of the things done by the English Act, and it seems very reasonable.

865. Mr. *E. Ellice.*] How would the evil be obviated, if it be an evil, that the Judge succeeding upon a vacancy should be obliged to employ the same clerk by the appointment being in the Executive Government instead of being in the preceding Judge?—It does not appear to me that it would be obviated at all.

866. Sir *E. Perry.*] If an incompetent clerk had been appointed by the Government, would not the Judge be more likely to complain than if the clerk were appointed by himself?—Yes; and I think he would find it more difficult to remove him.

867. Would it not be much more likely that the Judge would complain strongly of an incompetent clerk being in office, that clerk having been appointed by the Government, than if he had been appointed by a Chief Justice on the Bench?—He would probably complain more strongly, as he would find it more difficult to remove the clerk appointed by the Government.

868. Is not the power of removal the same in both cases, whether the clerk was appointed by the Government or by the Judge?—That is so in the Bill.

869. Has not the Judge of a court the power of removing an officer of his court on cause shown?—I do not know that. Many common law offices are patent offices.

870. *Chairman.*]

870. *Chairman.*] You stated, in substance, on your former examination, that you did not think there was any greater danger or responsibility in selling an estate, whether the petitioner was the owner, and whether that estate was an incumbered estate or an unincumbered estate; in other words, whether the petition was presented by the owner to sell his estate to discharge his incumbrances, or whether the owner presented it for his own purposes, made very little difference?—I think the difference is very slight. I think you get rather more publicity in the case of an incumbered estate, because more persons are interested in it. I do not think the difference between the two is material in that respect.

871. Are there any additional safeguards in the case of an incumbered estate that the Judge will, when the title is brought before him, come to a correct conclusion upon it, than in the case of an unincumbered estate?—No; all parties have exactly the same interest; they want to make the title a good one. You might say it was the other way; that there are more people pressing upon the Judge that the title is a good one in the case of an incumbered estate.

872. Is not the examination of the title precisely the same in the one case as in the other?—Yes, I think it is; it would be generally a more difficult title in the case of an unincumbered estate, because it would be a title which probably had never been in the market before.

873. You gave some answers in your former evidence in reference to squeezing out the middleman. Has it ever happened, to your knowledge, that in the course of your sales you have squeezed out the interests of occupying tenants who really had interests, but neglected to bring them forward?—I think that may have occurred. If it has arisen, it must have arisen by the gross neglect of the tenants, and possibly, in some cases, from extreme poverty.

874. You do take the trouble of giving notice to each occupier that the estate is to be sold, and of furnishing him with so much of the rental as applies to his particular holding?—We furnish him with the rental of the whole townland in which he holds.

875. Having to deal with an ignorant class of persons who do not understand the law, has it happened that you have what we have called squeezed out their interest and sold the estate discharged of their leases—It has happened, but only from inadvertence. I remember a case in which two tenants became through accident transposed in the conveyance; the result was, that one of the tenants, who had a lease, lost his lease, but he got ten times the value of the lease out of the funds.

876. Sir *J. Graham.*] As to squeezing the tenants, are occupiers more squeezed by an unincumbered purchaser than by a deeply incumbered seller?—That depends very much upon the character of the purchaser.

877. Sir *E. Perry.*] Would the remarks you have made with respect to the duties of the chief clerk apply to the court if it were made permanent?—They would; it would be necessary to put the court upon a permanent footing, and to make the various appointments pretty much of the same class, as corresponding appointments in the Court of Chancery. Except upon that hypothesis, I should never think of comparing the two systems of permanence and transfer. I should think that transfer should have a decided priority, unless I was quite sure that the appointments would be put upon as good a footing as in the Court of Chancery.

878. All your proposals for transfer are qualified; I see in nearly every answer upon the subject there is an "if;" "if" the supposed court would be made equally economic and equally expeditious; "if" the Judge exercises the same vigilance, and so on?—Yes.

879. If the court is made permanent, what number of Commissioners will be sufficient to perform the present duties and the increased duties by the sale of unincumbered estates?—I do not know whether it might not be necessary afterwards to increase the number; I should be disposed to retain three Commissioners, with a considerably increased staff of clerks.

880. I gather from your evidence that you think a Commissioner, with an increase of staff, will be able to perform twice the duties he does at present?—Yes.

881. Do you contemplate in that case that the Commissioners should sit in chambers four days a week?—I think they will sit very much as they do now.

882. Should the appeal be to the three Commissioners, as at present, on the other two days of the week?—I think it should; I do not know that any particular number of days can be defined; we have found of late the number of

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appeals has been diminishing very much; the full court business is not very heavy.

883. If the court is made permanent, in your opinion the proper plan would be to have the three Commissioners sitting daily in chambers, with an appeal to the three Commissioners, either on two days in the week, or as business required?—I think so; I see no reason to quarrel with the present system.

884. The farther appeal is to the Privy Council; does not that seem objectionable, as being a different court of appeal than the court of appeal for cases from the Court of Chancery?—It is objectionable; you might have the law settled differently by the two tribunals of last resort.

885. That would be entirely obviated by having the same court of appeal for cases from the Court of Chancery and the Incumbered Estates Court?—It would.

886. That being so, if this court is made permanent, and there is one court of appeal, what are the objections to this court sitting for its special class of duties, and the Court of Chancery sitting for general cases?—My objection is principally the one I stated before, that I think it very undesirable that a Judge should be confined to a particular branch of business, as I think in time he would become an inferior Judge even for that particular branch of business; I think also there would be great difficulty in putting the court permanently upon a proper footing; and I think there would be a great deal of danger under some circumstances of the court being destroyed. On account of one or two errors, there might be so considerable a pressure of public opinion against the court, that it might have the effect of destroying the court, and the principle of granting Parliamentary titles might be lost. There is not the slightest fear of its being lost if the court is transferred to the Court of Chancery.

887. You are against the application of the principle of the division of labour?—Yes; it would not be advisable to have a Judge who could do nothing but investigate the titles. After all, a large and responsible part of the Commissioner's business is judicial, and if the court were made permanent, the responsible part would be still judicial.

888. It is the most responsible part, and the most difficult part?—I think it is.

889. Is it not a much more easy thing for a Judge to administer justice with the assistance of able counsel before him, having both views presented to his mind, than having, quite unassisted, to go through a long abstract upon a matter which may be of importance to hundreds?—I think it is easier to decide particular points. The easiest business which a Judge does is to hear heavy cases upon points of law.

890. Would not the tendency of the Judge be to prefer the easier matter, to sit in open court, to hear counsel, than to take the more responsible task of investigating abstracts of title?—He must take the rough with the smooth, to use a common phrase.

891. Would not the tendency be that way?—Perhaps it would.

892. Have you not heard a complaint that the tendency now in Courts of Chancery is, that the chief clerks have thrust upon them the business of the Masters of old, and the Judge entirely leaves it to them?—If that be a well-founded accusation, I should say it is rather a reproach to the Judges.

893. Talking of human nature generally, is it not much more natural that a Judge would attach himself to the easy class of duties if he has a chief clerk by his side who can take the administrative duties?—I think we must assume that the Judge would have a due sense of his position, and would perform his duties faithfully.

894. Knowing the evils of human nature, must we not guard against them?—That principle would apply whether the Incumbered Estates Court is transferred to the Court of Chancery, or is continued as a separate tribunal.

895. Sir *J. Graham.*] Will you turn to page 16 of the Report; it is there said, "When, however, it is proposed that a Parliamentary title should be given, it becomes peculiarly necessary that the proceedings which are to produce that result should be exempt from fees and stamps." Are not the stamps upon a conveyance common both to the Court of Chancery and your court, and equal in amount?—Yes.

896. What is the advantage, in reference to the expense, of sales in your court, as contrasted with the expense of sales in the Court of Chancery, distinct from the stamped conveyance, which is common equally to both?—You allude, I presume

I presume, to the fees which are exacted in the Court of Chancery, and which are prohibited by the Incumbered Estates Act. That is one of the reasons, no doubt, why the expense of the Incumbered Estates Court is less in the sale of incumbered estates than in the Court of Chancery.

897. Can you give the Committee any statement of the quantum of difference of fees and stamps in the case of an estate sold, say for 10,000 *l.*, in the Incumbered Estates Court, and an estate sold for the same amount in the Court of Chancery under its existing powers?—On the sale of an estate worth 10,000 *l.* the stamp duty would be about 50 *l.*; that stamp duty would be exactly the same in the Court of Chancery and the Incumbered Estates Court. It is not anything incidental to our proceedings, but something which the purchaser has to bear in either court.

898. Are there any other stamps?—In the Court of Chancery there are stamps upon certain proceedings; that is, fees levied by means of stamps.

899. Taking a sale effected to the extent of 10,000 *l.* in your court, and a sale to the same amount in the Court of Chancery, what would be the difference of the fees?—I am not able to form any idea of that. There would be no fees in the Incumbered Estates Court, therefore the only question is what would be the fees in the Court of Chancery. That would depend upon the length and complexity of the proceedings. If there was any litigation, or long litigation, the fees would fall very heavily indeed upon the estate. I could not form any idea of the amount of the fees.

900. You cannot give any idea of the cost in the Court of Chancery as compared with the absence of such costs in your court?—No, I am not able.

901. This recommendation is distinct, that, if there be a transfer, the exemption which exists in your court should be extended to sales consequent upon the transfer to the Court of Chancery?—Yes, that appears to be so.

902. If you turn to page 18, you will find the 15th recommendation, "That stamps and fees upon all proceedings in Chancery should be abolished, or reduced so much as not to interfere with the dispatch of business or the publicity of the proceedings." The entire abolition of fees will be the introduction of a new principle, will it not?—I think it will. I believe upon all litigation in Ireland there are stamps used at various stages; I believe there are in nearly all the courts.

903. Would it be possible, in your opinion, to extend the exemption to the Court of Chancery in Ireland, and not to make it general throughout the United Kingdom?—It would seem a very anomalous system of legislation, undoubtedly.

904. Is not the entire abolition of fees on the sale of property, especially if it be extended from incumbered to unincumbered and settled estates, a very grave question?—Undoubtedly. Whatever is not raised by fees would have to be raised by the country in some other way.

905. Viscount *Monck.*] How is the money applied?—I am not familiar with that subject. My impression is that it goes to the Suitors' Fee Fund, and I believe the Suitors' Fee Fund is the fund out of which the retiring salaries and things of that sort are provided.

906. Is not the deficiency of that fund made up from the Consolidated Fund?—Yes.

907. Sir *J. Graham.*] It would be therefore, as relates to the fees which go to the Consolidated Fund, a transfer of the burthen from the parties possessing property to the public at large who pay the taxes?—Yes; it would be a transfer from the suitors to the tax-payers.

908. Sir *E. Perry.*] Therefore, in point of fact, this measure is an immense bonus to the landed interest in Ireland?—Yes, I believe it is.

909. Sir *J. Graham.*] If the principle were extended to England, would there not be a very large transfer of the burthen affecting land to the tax-payers generally?—It is not so much a burthen affecting land as a burthen affecting the suitors, which would be transferred from the suitors to the country.

910. In the cases supposed respecting the sale of property, the suitors are persons possessing land as sellers or desiring to possess land as purchasers?—Yes.

911. That is the class immediately connected with the land?—Yes.

912. As matters now stand, is not the burthen attending the sale and purchase of land confined to that class?—So far as the burthen relates to any Chancery business connected with land.

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913. The proposition therefore would transfer the burthen from that class to the community at large?—No doubt it must have that effect.

914. *Chairman.*] The proposition is to abolish or reduce them only so far as they interfere with the dispatch of business or the publicity of the proceedings?—Yes; that is the recommendation.

915. Sir *J. Graham.*] If the recommendation were adopted to a limited extent even in Ireland, with your knowledge of conveyancing in England, and the claims of parties in England, do you think the sacrifice could be confined to Ireland?—No, I do not know that it could; I do not, however, see how it would affect the landed interest in England, except so far as their interests were brought into litigation in the Court of Chancery; in truth, they are not brought into litigation here to anything like the extent that they are in Ireland.

916. If unfortunately litigation should be more prevalent in Ireland than in England, is that a reason why the English tax-payer should contribute to the cost of the litigation?—No.

917. If the produce of those fees were taken, and they ceased to be a burthen to the litigant seller and purchaser, and they were transferred to the Consolidated Fund, would not the tax-payers of this country bear the burthen which is now borne by those litigants?—They would bear their share of it.

918. Sir *E. Perry.*] What is their share of it?—I do not know.

919. *Chairman.*] As a matter of economic science, do you think it would be wise as far as possible to relieve the administration of justice from taxation?—It is a subject which I have not recently considered; I should suppose it would be; but it may be questioned whether the sale of estates is in this point of view to be treated as part of the administration of justice.

920. The proposition is, that the fees and stamps that impede the administration of justice, or prevent the due publicity of proceedings, should be abolished or reduced?—Yes.

921. From your experience in the Incumbered Estates Court, have the public derived great facilities and great safety in consequence of the absence of fees?—I think they have very great facilities; almost every one has had an opportunity of getting a copy of all the proceedings and perfect information as to the state of each case without exposing himself to the payment of fees.

922. Do you find that practically prevents objections and litigation which otherwise might arise?—I think so; a man comes himself and sees that his rights are not litigated or in danger, and goes about his business.

923. Are you aware that in the Court of Chancery, before you can even look at a document, you have to pay a fee for a search?—I believe you do.

924. If you heard that a petition was filed relating to a particular estate, have you not to pay a half-a-crown before you could look at the document?—Yes; and if you want a copy you must take an attested copy, which in some cases would be almost ruinous.

925. Part of the proposition here is, not that the taxation from which you relieve the suitors in the shape of troublesome fees or stamps that impede the administration of justice is to be thrown upon the Consolidated Fund, but it is to take an equivalent from the party by means of per centage?—No doubt.

926. Putting out of view the amount of that per centage, if the maximum is fixed at two per cent., do you see anything objectionable in taxing, to a certain amount, those who take advantage of the court, for the purpose of getting a Parliamentary title?—No. I think, on the contrary, this species of non-litigatory business ought to pay in truth for the business that is done for it by the court. The court acts as both solicitor and counsel to a certain extent to the estate, and I think the estate ought to be taxed to some extent, at least, for that benefit; to what extent, it is really very difficult to say.

927. Supposing by means of that small per centage you could raise 20,000*l.*, and apply it in the reduction of those fees and taxes which now impede the administration of justice, do you think that would be a good arrangement?—I am disposed to think it would.

928. I find in the Second Report of the Select Committee on Fees in Courts of Law and Equity the following recommendation: "That the amount required for the maintenance of the Court of Chancery, when the income arising from the Suitors' Fund is insufficient to pay, should be raised in the following manner; viz., first, that a poundage of one-half per cent. should be paid on the investment of all sums of money paid into court, and one-half per cent. on the payment

payment of all dividends, and one-half per cent. on the passing of the accounts of all receivers; second, that a fee of sufficient amount to make up the rest of the income required, should be paid on every order pronounced by the court." Do you think that the proposed poundage of one-half per cent. on the investment of all sums of money paid into court, and one-half per cent. on the payment of all dividends, and one-half per cent. on the passing of the accounts, would act more oppressively upon the suitors than the proposition contained in this Bill, which is a small per centage upon the money realised by the sale?—It is very difficult to say whether it would be more oppressive or not; I almost think it would.

929. For example, a large sum of trust money may be paid into the court of Chancery, say 100,000*l.*, without the will of the parties; the trustee chooses to relieve himself from responsibility, and he pays into court that sum of 100,000 *l.* according to the proposition; I have read upon the investment of that sum, one-half per cent. would be charged?—Yes; that would be 500 *l.* at once.

930. Upon the other side we take only one-half per cent. upon money realised, by a process which the parties themselves have put in motion for their own benefit?—What I should be most afraid of would be preventing parties coming into court at all, if they are dealing with a large estate. If you put a charge of one per cent. upon an estate worth 200,000 *l.*, it would cost 2,000 *l.*

931. Supposing you moderate the scale, and in large cases took one-half per cent., and in small cases one per cent.?—Then people would complain that you were making one scale for rich and another for poor. However, I think that would be the proper course.

932. Do you think that would be a well-founded argument?—No, I do not think it would; but it would have more effect than it ought to have.

933. Might not the amount of public time taken up by the sale of a small estate be as great or greater than selling a very large one?—It might, undoubtedly.

934. Mr. *S. Fitzgerald.*] I understood you to say just now that if the Incumbered Estates Court is to be made permanent, you would suggest that there should be three Commissioners?—If I was going to make it permanent at all, I would make it permanent upon its present footing as to the number of Commissioners. I do not see any reason to vary it.

935. Do you contemplate that those three Commissioners should have three clerks, in the manner pointed out by this Bill?—Yes, I think so.

936. And the existing staff also?—No. I would substitute for the present personal staff of the Commissioner, that is, an examiner and an examiner's clerk, two chief clerks, and two junior clerks. I would rather more than double his staff.

937. Will you explain how you reconcile these statements. You recommend three Commissioners, with each two chief clerks and two junior clerks to transact the present business of the Incumbered Estates Court, if it is made permanent, for the duties which would arise from the sale of unincumbered estates; you acquiesce in the suggestion that there should be only two Vice-Chancellors, with two chief clerks and two junior clerks to transact all that business, besides the Court of Chancery business?—There would be also the Master of the Rolls; there would be three functionaries in the Court of Chancery, as in the Incumbered Estates Court. I do not say that you would require three in the Incumbered Estates Court, but if you have not three what can you have? It would be impossible to have a court with two Judges, because you would have no means of getting an appeal at all; and you could not do the work with one.

938. I understood you to say that if the functions of the Incumbered Estates Court are transferred to the Court of Chancery for the sale of unincumbered estates, and for the accruing business of the Court of Chancery, you would recommend two Vice-Chancellors and the Master of the Rolls?—Yes, that is the number I would begin with; I would not shut myself out from increasing the number, if I found it essential.

939. Why, then, for the same amount of business, do you suggest that there should be three Commissioners, with each his staff of chief clerks, and each his staff of junior clerks, the Master of the Rolls remaining as he is at present?—It might be a question for consideration whether you should have two Commissioners supplied with two chief clerks and two junior clerks, leaving the third Commissioner to sit only as a Judge, removing him from chamber business.

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940. Do you conceive, if you were to have two Commissioners appointed to carry on the business of the Incumbered Estates Court, if it is made permanent, with their chief and junior clerks, if they had also the business of selling unincumbered estates, that those two Commissioners would have any spare time on their hands?—I think they would be very fully employed indeed.

941. You said just now that your objection to making the Incumbered Estates Court permanent was, that a Judge of that court would be apt to become an inferior Judge, because his attention would be confined to one class of business only?—That is one of the reasons why I think the Incumbered Estates Court should not be made permanent.

942. Have you any other objections to the continuance of the Incumbered Estates Court as a permanent court besides that?—I have the one which I have mentioned, that it would be much more open to attack than the Court of Chancery; in the event of any serious mistake being made the probability is that the court itself would perish, and the right of granting Parliamentary titles would be lost.

943. Sir *E. Perry*.] Would not that throw greater responsibility upon the court, which would be very desirable?—You may impose such an amount of moral responsibility upon Judges, that it would oppress them.

944. *Chairman*.] Supposing the Court of Chancery to make a serious mistake, although it might destroy the system it would not destroy the court?—I think the court would be able to protect itself from the effects of any odium.

945. Mr. *S. Fitzgerald*.] Why should not the Incumbered Estates Court be able to defend itself as well as the Court of Chancery?—It is very difficult to say why it should not; I think it would not be more open to attack, but that it would more readily succumb to it. It would occupy a very different position before the public to the Court of Chancery; nobody would imagine that the Incumbered Estates Court was anything more than the Court of Insolvency, or a Court of Bankruptcy at best.

946. *Chairman*.] You gave your reasons the other day for the foundation of your opinion that the Incumbered Estates Court ought not to be made permanent; one of those reasons was that it would be in effect establishing a second Court of Chancery?—That was rather an inference which you drew from what I stated.

947. If the Incumbered Estates Court were made permanent, would not this flow from it, that in many cases you would have the Incumbered Estates Court and the Court of Chancery acting on the same property?—You might have; but perhaps such a system might be adopted as would prevent that. The Incumbered Estates Court might, if it were made permanent, be provided with the machinery for appointing a receiver pending the sale.

948. Supposing that a system was devised of granting probate to real estate, creating representatives to real estate, would the labours of the court, having the sale of real estates, be relieved by that?—I think it would be a good deal relieved by that; at present I think the most dangerous class of cases the Incumbered Estates Court have to deal with, are supposititious titles. A person may be in possession of an estate as heir, for example; he may come and sell that estate and pocket the money, and it may turn out afterwards that he was not the heir. If you had a court provided that would ascertain the fact, acting in the manner of a court of probate, and constituting representatives for real estate, something in the same way that executors are constituted for personal estate, then I think the Incumbered Estates Court jurisdiction and the Court of Chancery would not have so much responsibility in relation to title thrown upon them.

949. Another case has happened in more than one instance. A gentleman possessed of an estate dies, he is supposed to have died intestate; his heir goes into possession, and after the lapse of nine or ten years a will turns up, and in the meantime you might have sold the estate?—Yes; or the heir, suspecting the existence of a will, might have sold the estate.

950. If this process of having probate to real estate, having some tribunal to call the will before it, if there did exist one, would prevent to a large extent that danger, and relieve you from responsibility?—Yes.

951. Have you considered the subject of the registration of titles as contra-distinguished from the registration of conveyances?—Yes, I have considered it a good

good deal; but the arguments upon the subject are not very well present to my mind now.

952. Supposing a plan for the registration of titles could be devised and carried into law, I presume the sale of estates would become a very simple matter as soon as you got all the deeds on the registry?—Yes.

953. Sir *J. Graham.*] The case has been put to you, that the Court of Chancery and your court might operate simultaneously on the same estate; if your court were rendered permanent, would it not be possible that you and the Court of Chancery might simultaneously be deciding with respect to equities between parties in questions *in pari materia*, and arriving at opposite conclusions?—That is a possible result.

954. Is it a probable result?—It would not occur often; I daresay in the course of a few years it would occur once or twice.

955. If your court, being permanent, had to transact the whole business of the sale of unincumbered, incumbered, and settled estates in Ireland, and to decide on the equities of the parties with respect to what may be said to be the whole of the landed property of Ireland, would not one of two effects happen, either that you must absorb the Court of Chancery, or, from the necessities of the case, you must be absorbed by the Court of Chancery; at least, one of the two must prevail?—I do not know that it would necessarily follow; you would have two courts having co-ordinate jurisdiction; the three common law courts have co-ordinate jurisdiction.

956. The power of sale of the whole of the real property of Ireland would be absorbed into your court if it were rendered permanent, would it not?—It would if the Court of Chancery did not possess a similar power. I answered the question upon the assumption that the Court of Chancery could sell with Parliamentary title.

957. Mr. *E. Ellice.*] Supposing your court were made permanent, would not the Lord Chancellor, being the superior of the whole court, have the power to make rules with respect to the whole of the cases being transferred to your jurisdiction, or to the jurisdiction of the Master of the Rolls and the Vice-Chancellors?—Yes.

958. Supposing it were deemed politic to retain your court and make it a permanent court, a regulation of that kind would prevent any evil from concurrent jurisdictions?—Yes; I do not think any evil would arise from the mere circumstance of there being two courts; all you would require would be an appeal from the two courts.

959. *Chairman.*] Supposing the appellate court took the cases of both the Incumbered Estates Court and the Court of Chancery, you would get rid of all the difficulty?—Yes.

960. Sir *E. Perry.*] At page 12 of the Report, I gather three or four reasons for not continuing the Incumbered Estates Court as a permanent tribunal. The first is the pressing necessity for the court having ceased; there is no adequate reason for the continuance of an extraordinary tribunal. The second reason is the inconvenient situation in which the court is placed, which we see by the evidence is very inconvenient. The third reason is, "In the course of a proceeding for the sale of an estate and the distribution of the purchase-money," many questions arise which a court of equity has to deal with; therefore the Incumbered Estates Court ought to have power to dispose of all the cases which arise; that being so, the only valid reason apparently is the first, because the second, as to the situation of the court, can very easily be met by transferring the present court to the neighbourhood of the law courts?—No doubt.

961. With respect to the third reason also, the power of disposing of every case as it arises, and deciding the equities, could be given to the Commissioners of the Incumbered Estates Court?—No doubt; I think the Commissioners treat it as a necessary inconvenience to have two courts of co-ordinate jurisdiction where there is no apparent necessity for it.

962. The third reason is, that the Commissioners should dispose of every branch of the case as it arises; and the fourth reason is, that the Commissioners should dispose of all the equities; that being so, the only reason that remains for the transfer of the jurisdiction is, that the business could be as well transacted by the ordinary tribunals?—That is substantially the reason, which is always implied in saying that there is no reason for making two courts where one will do.

963. Therefore the whole question of transfer will depend upon whether the business can be as well transacted by the ordinary tribunals or not?—I should suppose so.

964. What we hear of the evils arising from conflicting jurisdictions, you would meet by the answer, that you have cases arising to be decided by the court of appeal from courts of co-ordinate jurisdiction; in point of fact, have not the suitors the advantage of being able to choose between one of two jurisdictions?—Yes; some people think it an advantage to have two courts competing with each other.

965. Mr. *S. Fitzgerald.*] Is there any objection to having courts of co-ordinate jurisdiction beyond the possibility of their decisions conflicting?—If the courts were equal in point of dignity and position, I do not know that there would, but perhaps you would not require the staff of two courts.

966. Sir *E. Perry.*] At present your court is ancillary to the Court of Chancery in the sale of estates, is it not?—Partly.

967. Suits are commenced in the Court of Chancery, they are carried up to a certain point, the decisions of the Judge is obtained, and when the sale is to take place the matter is brought over to your court?—Yes; that has occasionally happened.

968. If your court is continued as a permanent court, do not you think that by the practice which has grown up, and which seems very convenient, the interests of the suitors would be consulted by having the advantage of a court deciding the interests of the parties, and another court determining the question of title?—I think it is an inconvenient course; I think it is desirable that the same Judge should transact the same cause from the beginning to the end.

969. If you are sure of getting Judges to devote their attention to the investigation of abstracts of title?—Yes, and to do all the duties imposed upon them.

970. Sir *J. Graham.*] With regard to the taxation of costs, your taxing department is in no arrear?—I believe not.

971. The taxing department in Chancery is in great arrear, is it not?—I think it is very great.

972. Have you seen the Bill which the Solicitor-general for Ireland has introduced?—Yes.

973. Is any remedy applied to that arrear in the taxing department of the Court of Chancery?—I do not think there is; as far as I remember, there is not any clause authorising the appointment of any additional officer. I am not quite sure about it.

974. Would not the confusion be great if the transfer of business from your court to the Court of Chancery took place with the large arrear in the taxing department in the Court of Chancery not met by any legislation?—I think it would be a very great evil.

975. *Chairman.*] Supposing they got a gentleman from the head of your office, would not that remedy the defect?—Assuming that another officer was provided who would do as much as the taxing officer of our court, that would remedy the evil.

976. At present in your court, in the administration of real property, do not questions of difficulty arise; for example, has not a difficult question arisen upon the application of the rule in Shelly's case on some question of contingent remainder, which you are in the habit of sending to be determined in a court of law?—Whenever they are raised in a controversial form; but I do not think we can do that when they merely arise upon the title, and we have no one before us to raise the question.

977. But still, though you have no one before you when investigating the title, you may give directions to bring before you the person who would have an interest in raising the question by controversy?—Yes; but it is often very difficult to find any person representing that latent title.

978. Is it only in controverted cases that you direct the opinion of a court of law to be taken?—The courts of law rather object to take cases which are only argued *ex parte.*

979. Cases with respect to the jurisdiction of the court?—Yes, they are necessarily *ex parte*; I think a court of law rather dislikes the notion of hearing a case *ex parte.*

980. Do not you also exercise jurisdiction in reference to the administration of funds;

funds; to direct the funds to be paid into the Court of Chancery?—That is a power we have very rarely exercised. C. J. Harg Esq.

981. Do you recollect a case which was recently tried at Nisi Prius, before the Chief Justice in Dublin, arising from a supposed mistake committed in your court; I do not know the name of the case; it was a case in which, after the sale had taken place, it being discovered that the vendee of the estate, the purchaser in your court, had less by 100 acres of bog than he ought to have got; the parties were called before Mr. Longfield, and the conveyance was rectified by the counsel at the trial painting in upon the margin 100 acres of bog?—I do not recollect any such case. 13 March 1

982. With respect to the numerous money orders that the Commissioners have made from time to time, according to the practice of the court, is there any book or record kept of every money order?—Every payment appears in the accountant's book.

983. Supposing you found a payment of 10,000 *l.* entered in the accountant's book as having been paid, is there any means of discovering absolutely the order of the Commissioner upon which that payment was made?—I think there is; I never in my own office had the slightest difficulty upon the subject; I could turn in five minutes to any order that you asked for.

984. Do you enter every money order?—It is not entered in the shape of a money order, it is entered in the shape of a fiat; it is in this form: "Pay 1,100 *l.* to A. B. and C. D., the executors of E. F., in full of demand No. 7 on the final schedule." On probate of the will of E. F. being produced, the money is paid to those parties.

985. Have you a record of that kind?—Yes.

986. I ask you the question, because recently in a case in the Court of Common Pleas we found immense difficulty to ascertain what the Commissioners had decided, or what money the Commissioners had paid out?—I should suppose that you had not resorted to the best means for getting information.

987. The Commissioners had reduced the demand of the claimant by, I think, 1,200 *l.*, but why, or in respect of what that reduction had been made, there was no trace at all?—I can hardly imagine how that could have occurred; in the ordinary course of affairs it would arise in settling the final schedule; the demand, I presume, must have been reduced upon the objection of some person.

988. There happened to be a number of conflicting objections, and it was important to know what the Commissioners had allowed, and what they had disallowed?—I can imagine that there might be a difficulty; we have nobody to take down the orders made in chambers.

989. Is there anything else which you wish to add to your examination; have you any observation to make, or any suggestion to give?—An observation occurs to me as to the extent to which Parliamentary title is applicable, particularly where you are selling limited and partial interests in land; it would be important, I think, in such a case as that, not to give an absolute Parliamentary title, for example, to a life estate, but merely the Parliamentary title to the life estate, as against all persons deriving their interest in the life estate subsequently to the time it was created, but not affecting in any way to bind interests existing behind the settlement which creates the life estate.

990. Just as you do in selling leases?—Just so. I think also there would be great difficulty in giving a Parliamentary title upon selling reversionary interests; it would be hard to compel the tenants to come forward to prove their leases upon the sale of a reversion; but if they do not, you must sell in such a manner that their interests are not damaged. I think you cannot deal with the question of Parliamentary title quite in the summary way in which it is dealt with by the clause in this Bill.

991. You are aware that in the Bill there is a clause providing that the Judge may refuse to give a Parliamentary title, or give it subject to qualifications and conditions?—I do not think it exactly applies to the case I refer to; that would apply to the case in which the fee simple was intended to be sold, and there was some little outstanding interest that prevented the sale of the fee; I can hardly consider that applying to the case I have mentioned.

992. Mr. *S. Fitzgerald.*] In reference to a question which has been put to you, whether it would be possible that property might be in this situation, that it should be operated upon by two courts at once, would that be the case, or likely to be the case, if the Incumbered Estates Court is made permanent and

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its jurisdisction improved in the way you have suggested, having the power to appoint receivers, and in the other respects that would be desirable?—I think that would probably prevent the estate being brought simultaneously into the two courts. Do not understand me, however, as suggesting that the Incumbered Estates Courts hould have the appointment of receivers. I think if the Incumbered Estates Court had the power of appointing receivers, the great tendency in the practitioners in the court would be to get a receiver appointed, and not bring the estate to a speedy sale at all.

993. Mr. *Grogan.*] In the event of the court being made permanent, you would not suggest the appointment of receivers?—Pending the sale, it might be desirable to do so, otherwise the rents might be lost.

Jovis, 3° die Aprilis, 1856.

MEMBERS PRESENT:

Sir James Graham.	Viscount Monck.
Sir Erskine Perry.	Mr. De Vere.
Mr. Henry Herbert.	Mr. Grogan.
Mr. Seymour Fitzgerald.	Mr. Macartney.
Mr. Henley.	Mr. Edward Ellice.

THE RIGHT HON. SIR JAMES GRAHAM, BART., IN THE CHAIR.

The Right Honourable the *Master of the Rolls for Ireland*; Examined.

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994. *Chairman.*] HOW long have you filled the office of Master of the Rolls for Ireland?—I was appointed on the 26th of January 1846.

995. This Committee has before them the Report of the Commissioners appointed to inquire into the Incumbered Estates Court; at page 73 of the Appendix there appear answers given by you to certain questions which were propounded to you; do those answers in the main contain your present view of the subject referred to this Committee?—They do.

996. When you gave those answers you had not seen the Bill presented to Parliament brought in by the Solicitor-general and the Attorney-general for Ireland, and Mr. Horsman?—I forget whether I had then seen the Bill brought in last Session; I had not seen the Bill of this Session.

997. Have you now seen the Bill presented this Session?—I have.

998. That Bill contains proposals for the reform of the Court of Chancery in Ireland, somewhat analogous to the reforms already by law introduced into the Court of Chancery in England, does it not?—Somewhat analogous, but omitting some most important provisions of the English Act.

999. Would you point out to this Committee what are the omissions in the Bill which strike you particularly?—The 98th and 100th sections, and some other sections, contain provisions with respect to the examination of witnesses. Now, there are in the English Act of Parliament other sections which precede the sections corresponding with those which I have mentioned, and those sections are omitted from this Bill. I may, perhaps, very shortly explain the nature of those omissions. In Ireland Bills are not now filed; the proceeding is by cause petition, under the Court of Chancery (Ireland) Regulation Act of 1850. The Lord Chancellor has decided, upon the construction of that statute, that there is no pleading on the part of the respondent. Now, the consequence of that is, that this very objectionable course of procedure is in operation in Ireland: there is a cause petition filed, verified by a short form of affidavit, stated in the Act to which I have referred; the respondent within a limited time puts in one or more affidavits, but no pleading; they are a mixture of proof, of evidence of pleading, and everything. The petitioner puts in affidavits in reply, and then, with the permission of the court, which, from the view taken by the Lord Chancellor of Ireland, is in fact never refused, the

the respondent files affidavits by way of rejoinder. The petitioner then files affidavits very often by way of surrejoinder. You then may have affidavits by way of rebutter, and affidavits by way of surrebutter. In one case which came before me, the affidavits ran beyond the surrebutter. In my opinion nothing can be more objectionable than that course of procedure: the effect is, that each party is trying to outswear the other. I shall now state what the English course of procedure is: in England, when a bill is filed, which is analogous to our petition, for it is without interrogatories, and very short, there is an answer by way of affidavit filed within a limited time: the plaintiff then has the option of giving notice to the defendant whether he proposes to hear, or to prove his cause by affidavit or otherwise. If the defendant does not object, as I understand the English practice, the case is heard upon affidavit; and there are many cases which may be very properly heard upon affidavit; but if either party does not choose to adopt that course, you proceed to the examination of witnesses, under clauses similar to those to which I have referred. Now, if a cause is heard in England upon affidavit, the course of practice is this: there is a day fixed beyond which no affidavit can be filed, and each party, there being an issue joined between them, proves his case by affidavit. One party has not the opportunity of outswearing the other. The affidavits must be all filed on or before the last day for filing affidavits, and the courts in England are very strict in not permitting any affidavit to be filed after that day. There is a recent very important case, in which the whole subject was considered by the Lords Justices of Appeal in England, in which incidentally, without knowing the Irish practice, they express their condemnation of such a practice; the case is Thompson *v.* Partridge, which is reported in the fourth volume of De Gex, Macnaghten & Gordon's Reports, page 794. I think it will be at once observed by the Committee that that is a far preferable system to the system of allowing the filing of affidavits upon affidavits interminably up to the hearing of the cause—one in answer to another. Now, the clauses which relate to that course of procedure in England are altogether omitted from this Bill, and also all the clauses which provide for the joining of issue and enabling the plaintiff to determine whether he will have his cause disposed of by affidavit or by oral examination; and there has been introduced into this Bill the mode of oral examination without any issue joined between the parties, and without, so far as I understand the case, any mode of ascertaining what are the questions which are to be decided. I totally object to the whole system, which has put an end to pleading on the part of the respondent in Ireland, and I think that by introducing four or five clauses from the English Act of Parliament you could make the practice substantially the same, and in so doing, I may observe, you would carry out a recommendation of the Commissioners themselves, who in an important passage in their Report, at page 15, make the following statement: "We think it for the interest of the public and the profession that the English and the Irish Court of Chancery should be assimilated in their practice as closely as circumstances will permit, so that the decisions of each may be applicable to both, and thus tend to establish a uniform system in the two countries." I entirely concur in that, and the observations which I have taken the liberty of making are to express my strong opinion as to the necessity of the introduction of some of those clauses in the corresponding English Act which precede and follow those which relate to the oral examination of witnesses, and lead to an issue being joined between the parties.

1000. Then, if it be assumed that a transfer of the jurisdiction of the Incumbered Estates Court may safely be made to the Court of Chancery in Ireland, on the ground that this Bill will remedy all the defects leading to delays in the Irish Court of Chancery, such an assumption would not, in your opinion, be well founded?—I think not, as a mere question of procedure, independently of other questions; and which, in fact, is quite an independent question.

1001. Therefore the Bill, as now framed, purporting to amend the administration of justice in the Court of Chancery in Ireland, falls short, in your opinion, of what is required, and in the particular instances pointed out by you, falls short of the recommendation of the Commissioners?—I think it does.

1002. Do any other defects occur to you in the proposed alterations in this Bill?—That is the material objection; I cannot go the length of saying that there may not be some minor objections of a trifling character, but that is the main objection to that portion of the Bill which relates to practice and procedure.

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1003. Let me call your attention to clause 151 of the Bill, which clause, contemplating the sale of settled estates, seems to grant the power of allowing "any part of the consideration to be a rent issuing out of such estate, and to be secured and settled in such manner as the court shall approve." Does it appear to you to be a salutary provision, with a view of removing incumbrances on landed property in Ireland, to sell an estate subject to a rentcharge without limitation in amount?—In answer to that question, perhaps I may be allowed to say that I disapprove *in toto* of the sixth part of the Bill, of which that clause is a portion, relating to the sale of settled estates and unincumbered estates.

1004. You disapprove of the whole of that portion of the Bill?—I do.

1005. Will you, shortly, state to the Committee the grounds of your disapprobation?—Under the provisions of that part of the Bill, the Court of Chancery is authorised, with the consent of the trustees of settlements, to set aside every family settlement in Ireland, which is, I think, very objectionable. I may perhaps illustrate it by stating to the Committee a case which has actually occurred in the Incumbered Estates Court as to an incumbered estate. I believe I can state the facts accurately, from circumstances which have come to my knowledge; but it would be very desirable to have a return moved for, to ascertain the accuracy of my statement; some of the documents I have not seen. Lord Blaney was seised of his family estates in Ireland for his life (as I recollect from having, many years ago, when counsel read the deeds), with remainder to his first and other sons in tail, and with remainder to himself in fee. Lord Blaney had a singular notion, which Lord Eldon is said to have had, of what the latter called the delightful simplicity of the Three per Cents; Lord Blaney was very desirous to turn all his landed property into Three per Cents, and he consulted counsel, before the passing of the Incumbered Estates Act, to see whether that object could be carried out, he undertaking never to marry, and never to have a son. Of course it is not very likely that he could get a purchaser under those circumstances, although he had the reversion in fee, and could dispose of the estate, subject to that contingency. As soon as the Incumbered Estate Act was passed, I have been informed that he presented a petition to the Incumbered Estates Court, his estate having very trifling incumbrances upon it compared to its value; and I have a copy of the title-deed here by which the Incumbered Estates Commissioners have sold the whole of those estates for 180,000 *l.* The effect of that course of proceeding is just this: if Lord Blaney had a son, and his son came of age, he being a Peer, would naturally look for his family estates, and the magnificent domain, which many Honourable Members now present have seen, at Castle Blaney, and he would be told that the estate had been sold, and disposed of by this course of proceeding of an arbitrary and despotic tribunal in Ireland, and he must look to the Three per Cents for his property. I entertain a strong opinion that no court of justice in Ireland should be empowered to set aside family settlements.

1006. In your answers to the questions appended to the Report of the Commissioners, you state that, on the whole, the Incumbered Estates Commissioners have performed the important duties entrusted to them with great ability and caution?—I think they have. I suppose, owing to the quantity of business which they have done, they have overlooked the state of the title in the case to which I have referred, and in other cases.

1007. But, generally speaking, do you adhere to the opinion that their duties have been performed with caution and ability?—Yes; I think they have.

1008. And treating the position of Ireland as exceptional at the time of the passing of the Incumbered Estates Act, are you of opinion that, on the whole, its operation to meet such exceptional case has been salutary?—I think it was a salutary Act, having regard to the exceptional circumstances of Ireland when it passed, but those exceptional circumstances having ceased to operate, I disapprove altogether of rendering it a permanent measure, no matter what tribunal is employed to carry out its provisions, when you have no similar Act in England.

1009. You would be opposed therefore to the continuance of the powers of the Incumbered Estates Court, as well as to the transfer of its jurisdiction to the Court of Chancery?—I disapprove of it as a permanent measure, no matter what tribunal is appointed to carry out the powers.

1010. You are of opinion that the exceptional circumstances have ceased in Ireland

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Ireland which render such provisions salutary?—I think they have either ceased to operate, or will have ceased to operate when all the property which is now in the Incumbered Estates Court shall have been sold.

1011. You are aware that the powers of the Incumbered Estates Act expire in the course of the present year, except as to winding up any decisions to which the Commissioners may have come on petitions presented to them before that period?—Yes.

1012. On the whole, would you recommend that the continuance of the Incumbered Estates Court should be limited to such a period as would enable the Commissioners to wind up any business which they have before them, without a transfer to any other tribunal?—My opinion, with great deference, is this. I strongly object to the system of exceptional and experimental legislation for Ireland; I think it is the very worst part of the empire in which to try experiments. If the Incumbered Estates Act be a proper measure for Ireland at present, it is a proper measure for England. My strong belief is that if it is sought to be introduced into England, English gentlemen will begin to carefully examine the provisions of that measure. I believe it renders all property in Ireland insecure. If it is a mere Irish measure it may be disposed of on some Wednesday morning in a thin House, but if you give us the benefit of English legislation we shall have a very different measure, in my opinion. What I should state to be my view is this; there is now before Commissioners, appointed by the Crown for that purpose, an inquiry proceeding—I have myself answered at very great length queries put to me by those Commissioners—as to the state of the law in relation to the transfer of land; I am of opinion that a very radical reform is wanting in that branch of the law. I do not know, of course, what view the Commissioners will take, but their Report may be shortly expected, and if you were to propose to introduce the Incumbered Estates Act, or to give the Court of Chancery in England the power of the Incumbered Estates Commissioners, I have no doubt you would be met at once by this argument, "Wait for the Report of the Commissioners." If the Commissioners recommend reform, which I take for granted they will do, why are we not to have the same measure in Ireland? There cannot be one measure of reform for Ireland proper, and another measure of reform for England proper. Of course I speak with the greatest possible deference to the opinions of others, but I should be glad if the Incumbered Estates Act were continued for a year, or two years, to await that Report, and then to have corresponding legislation for each part of the United Kingdom.

1013. If the view which you have just stated were realised during the further limited period for which the Incumbered Estates Court in Ireland would be extended awaiting the decision of the Real Property Commissioners in England, would you give them the power to receive fresh petitions, and to exercise all the powers of selling incumbered estates as heretofore?—I think there would be no objection. Where there is a tribunal existing which no doubt facilitates the sale of estates it might be objectionable to allow it to expire until you ascertain whether the Commissioners may recommend, which they possibly may do, the adoption of that principle in England; I think it would be perhaps better, according to my view, to continue that tribunal until it is decided, which it must be before long, what course of procedure will be adopted in England with relation to the sale and transfer of land.

1014. You have already expressed an opinion adverse to the extension of the power of sale to settled property; allow me to ask what your opinion would be of the extension of the power to unincumbered property?—I stated just now, that I think the powers exercised by the Incumbered Estates Commissioners are inconsistent with the security of all landed property, and of course the same objection will apply whether the estate be incumbered or unincumbered; it might perhaps apply more strongly to unincumbered property, for there will be the less chance of any opposition.

1015. If it should appear that the opinion of the proprietors of the soil of Ireland was favourable not only to the existing facility of the sale of incumbered property, but extended also to a desire to have those provisions made available for unincumbered property, what would you say to that desire on the part of the proprietors; would it be that the proprietors *in esse* were regardless of the interest of those *in posse*, their heirs?—I think proprietors are very little aware of the consequences which may follow from a careless discharge of the duties of a judge in selling estates. No doubt you have the duties carefully performed now,

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and the Master of the Rolls for England in his evidence appears to consider that he would not recommend the proposed transfer at all unless upon the assumption that you were to transfer Mr. Longfield and Mr. Hargreave to the Court of Chancery; I think that is one of the strongest arguments that can be used against the proposal. If there are only two persons competent to discharge the duty, of course it is not consistent with the security of property that such powers should be given to the Court of Chancery.

1016. Your knowledge of Ireland, you being constantly resident there, must lead you to observe what is the feeling of proprietors generally with respect to this power of sale; is it adverse or favourable?—I am bound to say that I think it is favourable, but I think it is favourable from a very great misconception as to the consequences of the Act of Parliament. They look to this, that property is sold perhaps to advantage, from the impression that a Parliamentary title is given; purchasers of course are anxious to get a Parliamentary title; but what is overlooked is, that the owners of property in Ireland, the owners under family settlements, for example, and persons in remainder having interests in estates, are quite insecure with these provisions.

1017. Then your apprehension is with regard to contingent and remainder interest?—Yes; partly that.

1018. As relates to existing proprietors, is not their interest the best guide to their feelings and wishes with respect to those powers of sale, whether of incumbered or unincumbered property?—Yes.

1019. Upon the whole, their opinion and feeling is favourable, is it not, to those powers?—I think it is.

1020. And not only to the power of selling incumbered property, but on account of the extra value given to an estate by an indefeasible title, they would wish to see it extended to unincumbered property?—I think I am bound to state that that is the impression.

1021. If the sale of Incumbered Estates be prolonged, will not the desire on the part of unincumbered proprietors become stronger, and in a short time irresistible in equity?—Perhaps it may; I am an advocate for a greater extent of reform in relation to the transfer of land than almost any person in the country. I am of opinion that you ought to be able to transfer land with as much facility as you transfer stock, but I would not carry it out by this process.

1022. The Commissioners, who have been already referred to, have had the advantage of your opinion and advice with regard to what you think is the proper remedy for the more easy transfer of land?—Yes.

1023. They are in possession of your views?—Yes.

1024. Sustained by your reasons?—Yes.

1025. Your opinion is on record in that respect?—Yes; a Member of this Committee happens, as I believe, to be a Commissioner, and I have not the slightest objection to my evidence being laid before the Committee.

1026. Sir *E. Perry.*] Does not your evidence relate to a system of registration being adopted?—Yes; it would be extremely difficult, from the nature of the question, to state my views shortly.

1027. If the Incumbered Estates Court is to be permanent, to what tribunal would you think it fit to transfer the powers?—I am disposed to say that I should rather leave the powers with the Incumbered Estates Court. I am a very great opponent, of course, to that division of labour which is condemned by this Bill, which allows one part of the same suit to be conducted by different branches of the Court, referring from the Master to the Court, and the Court to the Master; but I confess I am rather an advocate for that division of labour which throws the entire of a particular branch of jurisdiction upon a particular court or tribunal; whether you call them Incumbered Estates Commissioners or not, you could place them very much under the control of the Court of Chancery, by altering the appellate jurisdiction; that is, taking it from the Privy Council, and giving it to the Lord Chancellor and the Lord Justice of Appeal.

1028. *Chairman.*] With respect to the portions of this Bill which relate to the Court of Appeal, namely, the third branch of it, from clause 50 to 64, do those provisions meet with your approbation?—I think the principle is right; there are some of the details of which I very much disapprove.

1029. Will you state of what you disapprove under that head?—By the first section of the third part of the Bill, at page 20, it is provided: "It shall be lawful

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lawful for Her Majesty from time to time to nominate and appoint a fit person who shall have exercised the office of High Chancellor of Ireland, or who shall be one of the Judges of the superior courts of common law at Dublin, to be a Judge of the Court of Appeal in Chancery, and every Judge so nominated and appointed shall hold his office during Her Majesty's pleasure." I consider it most unconstitutional to make any Judge hold office during pleasure. You will observe what the consequence is: I will take the case of a puisne Judge; a puisne Judge, upon being appointed a Lord Justice of Appeal, is to remain a Judge of a court of law; he is to receive his salary as a puisne Judge, and he is to receive 1,500*l.* a year in addition as a Lord Justice of Appeal. Surely it is not to be tolerated that the Crown is to have the power of removing him from what may be considered the office of Chief Judge back to the office of puisne Judge, depriving him of 1,500*l.* a year of his salary. It is rendering that Judge dependent, and contrary to the whole principle of the Act which was passed in the first year of the reign of George the Third.

1030. Do you attach any value to the qualification with regard to the Judge of Appeal being a barrister-at-law of 15 years' standing; do you think it is wise to narrow the choice by a limitation of that description?—The argument, I should say, in favour of it is, that it is the qualification in the English Act of Parliament; and I am, I must say, very strongly of opinion, that assimilation of legislation, as far as possible, should be made.

1031. If you sought to assimilate legislation, would that assimilation be by retaining qualifications of that description, or by abolishing them?—There is some difficulty in answering that question. I shall state with respect to my own office: I looked yesterday into the Act of Parliament under which the office of Master of the Rolls has in fact been established as a legal office. It was in 1801, by the 41 Geo. 3, c. 25, and that Act of Parliament recites the old statute, under which it states, that the office of the Master of the Rolls has been held during pleasure; it authorised the King, his heirs and successors (those are the words of the statute), to appoint any person to be Master of the Rolls during good behaviour; and then it provides that the Master of the Rolls shall have certain power of hearing causes and making orders in the Court of Chancery in Ireland. I am not aware of any subsequent Act of Parliament imposing any qualification. But there has never been a Master of the Rolls, I believe, who was not of 15 years' standing.

1032. Clause 59 contemplates the appellate jurisdiction in Ireland being amended; the clause to which we are now referring contemplates the maintenance of the appeal to the House of Lords, which would be a double appeal; with an appellate tribunal reformed in Ireland, and being made really effective, would you be of opinion that the double appeal should be maintained?—Most certainly. I have the strongest opinion in favour of an ultimate appeal to England. If you have not an ultimate appeal to England, the result, after a certain number of years, will be that the law in both countries will become totally different by means of judicial decisions. Several instances have occurred; not very long ago, the opinion of the great majority of the Judges of the Court of Exchequer Chamber in Ireland was reversed in the House of Lords. There are some most important cases of Irish appeals at this moment before the House of Lords.

1033. The double appeal is attended with great expense to suitors and individuals, is it not?—It is; I think the appeal jurisdiction, if I may take the liberty of saying so, in England, requires to be reformed as much as any matter connected with the administration of justice.

1034. Assuming the appellate tribunal in Ireland to be amended, and that the appellate tribunal in the last resort, which is now being considered, should also be amended here, though the cost may remain considerable to individuals, you think the public good arising from the double appeal would supersede all objections that would lead to their extinction?—I do; I think it is perhaps creditable to our country that there are few Irish appeals, considering the amount of business disposed of; it shows that there is a great deal of care taken by the Judges in the disposal of the causes.

1035. Clause 60 contemplates the Lord Chancellor sitting alone as an appellate Judge, and other clauses contemplate also his continuing to hear causes in the first instance; would not the double operation of those clauses be inconvenient, in your opinion, seeing that he might sit as the sole Judge of Appeal possibly from one of his own judgments?—I think his being a sole Judge of

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Appeal is undesirable. A remarkable instance of that occurred not long ago; I decided a very important case; there was an appeal to the Lord Chancellor, and his Lordship pronounced rather an elaborate judgment, reversing my opinion. The parties pressed very much for the case to be sent to a court of law; the case was sent to the Court of Queen's Bench; shortly afterwards the very same question happened to arise before myself between other parties, and I sent the question to the Court of Common Pleas, so as to have the advantage of the opinion of two courts of law. The Court of Common Pleas unanimously decided with me, and three Judges of the Queen's Bench decided with me. I think that case alone shows the importance of having two Judges to decide in a court of appeal instead of one.

1036. If part 3 of the Bill, subject to the observations which you have already made with respect to particular clauses, became law, would you think it desirable that the Lord Chancellor should hear causes in the first instance or not?—I think it is desirable; I do not think his time would be fully occupied by appeals; if his time were occupied by appeals, of course he would then direct that the causes should be set down before me or the Vice-Chancellors. But I would leave it optional to the Lord Chancellor to do, what he has always done in Ireland, hear original causes. I see an advantage in the Lord Chancellor hearing a cause originally. If a cause is heard before me, it may lead to an appeal; if heard before his Lordship, it will be final, unless the parties choose to come to England.

1037. You see no objection to the provisions of the Bill in that respect?—I do not; I think the Lord Chancellor should have the power of hearing original causes; I would not coerce him.

1038. Does not the Lord Chancellor hear lunacy petitions, and matters of bankruptcy?—Yes, but they occupy a very short portion of his time.

1039. Your opinion would be that his appellate jurisdiction, lunacy and bankruptcy business, would not fully occupy his time?—I am disposed to say so.

1040. If his time were fully occupied, he would not hear causes in the first instance?—No.

1041. Otherwise you would see no objection to it?—None whatever; it has been the uniform practice, and it would work very well.

1042. Does the second portion of this Bill with respect to the abolition of the Masters meet with your approbation or not?—It meets with my entire approbation, both because it assimilates the procedure to that of England, and also on its own merits.

1043. You are aware that there is a departure from the English example; in England, upon the abolition of the Masters, the Vice-Chancellors appointed their own chief clerks, and second clerks, subject to the approval of the Lord Chancellor; in this Bill it is proposed that they shall not appoint their own clerks, but that the patronage shall be vested in the Lord Lieutenant; what is your view of that departure from the English example?—I confess, I concur in the unanimous recommendation of the Commissioners, that it should rest with the Judge. The principle of this Bill I apprehend to be this: that each Judge is supposed to do the entire business; although he would do it in part through the medium of officers, he is in fact the person responsible; if you allow the Government to appoint those four gentlemen, they may be four persons with whom it would be impossible to work.

1044. It is feared that the Vice-Chancellors would job the patronage; from your experience, would you have greater confidence that it would not be jobbed at the Castle?—I think there might be judicial nepotism on the one hand, and political appointments on the other; and I would rather run the risk of judicial nepotism than have gentlemen appointed by the Secretary to the Treasury.

1045. Would you not think it desirable, if the patronage is vested in the Judges, that there should be a veto in the Lord Chancellor?—Certainly.

1046. And considering that there should be that veto, public opinion operating upon the conduct of the Judges, would you be of opinion that upon the whole the power of appointment might safely be vested in the Judges?—I think it might: and if the Judge has no relative or connexion to appoint, he will for his own sake act honestly. Perhaps I am an impartial witness, because I have no relative or connexion, either by blood or marriage, but one, whom I could

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appoint under the qualifications of the Bill, and I do not mean to appoint him; so far as I am concerned, I am disinterested. I should not appoint any person related to me by blood or marriage; not having therefore any direct interest upon the point, I should naturally endeavour to select persons who would assist me properly.

1047. Would not the Judges having the most laborious and important functions to perform, if they are responsible for the whole duty, have a deep interest in appointing efficient assistants?—Undoubtedly. If a Judge happened to have a son competent to perform the duties, it would be a very hard thing to say that he was disqualified. Having myself no interest in the point, looking at it in a public point of view, I think it is desirable for the interest of the public that those four officers should be appointed by the Judge. The patronage may be abused by the Government, and it may be abused by the Judge; I think it is almost certain to be abused by the Government. I do not refer to any particular Government, but Governments generally; and I think there is a chance, at least, of its not being abused by the Judge.

1048. Do you see any reason for the qualification that a barrister of six years' standing may be appointed, but that a solicitor must have served 10 years?—I do not see why a solicitor should serve 10 years, any more than a barrister. If a solicitor is not qualified by six years' standing, he will not be qualified by 10 years.

1049. Is not he just as likely to be qualified as a barrister of six years' standing?—Just; and perhaps more likely, from his having served an apprenticeship.

1050. On the whole, the Committee may collect that you are favourable to that portion of the Bill providing for the abolition of the Masters, and the appointment of two Vice-Chancellors, they having the patronage of their first clerks, and being responsible for the whole duty of superintending a cause from its commencement to its close?—I am decidedly of that opinion: a number of decrees made by the Masters come before me; the Masters act as Vice-Chancellors under the Court of Chancery Regulation Act of 1850, appeals from the Masters under that Act of Parliament are heard before me. A great number of reports also come before me; I distribute all the money in the Court of Chancery, there being a clause which prevented the Masters from doing so, and I therefore have an opportunity of observing the delays. Proceedings are often pending in the Master's Office for a number of years. It is impossible that those cases could be pending for the same time, if the Judge had control over the proceedings in his own chambers.

1051. The experience in England, subsequent to the abolition of the Masters, of the conduct of the case by the Judge under his own exclusive supervision, would be a guide, would it not, with respect to a similar operation in Ireland?—I think so; I understand it is working well; so I am told.

1052. If your view should prevail, and the Incumbered Estates Court should be continued either for a limited time or indefinitely, and the transfer should not take place to the Court of Chancery, are you of opinion that upon the abolition of the five Masters, or four Masters, retaining one for special service, it would be necessary to appoint two Vice-Chancellors in Ireland, in addition to the Lord Chancellor and your own office?—That is an extremely difficult question to answer; I have been informed, though I do not know it of my own knowledge, that the business of the Court of Chancery has been very much increasing under the operation of the Act of 1850; certainly the causes are carried on much more expeditiously and much more cheaply than formerly. It is very difficult to say what the result of this reform would be; I think it is a great mistake to have too few Judges at commencing, for if an arrear once accumulates you never can get rid of it. I should be rather disposed myself to recommend being on the safe side, and have a provision in the Bill that no successor of the second Vice-Chancellor should be appointed, unless, perhaps, with the sanction of Parliament, or something of that sort.

1053. You would begin with appointing two Vice-Chancellors, providing no second appointment on the first vacancy should be made, unless Parliament should so determine?—I think so; you could then ascertain how the measure was working. It is a matter of vast public importance that no arrear should accumulate; I am very much disposed to think, although some persons think otherwise, that the Lord Chancellor, the Master of the Rolls, and two Vice-

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Chancellors (although you are reducing the number of Judges) could keep down all arrears, provided you continue the Incumbered Estates Court.

1054. Might I ask you what is the state of business in your court?—I have no arrear whatever; I not only have no arrear, but I have in fact disposed by anticipation of about 140 motions and petitions of next term; I gave liberty to hear them after the term, to facilitate the suitors. The last day for serving notices is about three days before the last day of the legal term. I gave liberty, I believe, in every case but two or three, to set down the petition, or give notice of motion. I disposed of them all, and it took me, I believe, after I rose on the 4th or 5th of March, a fortnight or more than a fortnight, working hard out of court, in writing out all the orders and judgments; but in the first week of next term, not only will there be no case in arrear when I give the judgments and made the orders, but I shall have anticipated a portion of the business.

1055. Is your time fully occupied?—I believe it is considered in Ireland that I have worked hard. I have to work a great deal out of Court.

1056. Is it your habit to write your judgments?—Every important judgment I write, with the view of having it accurately reported.

1057. How many months in the year do you sit?—Taking the last term, for example, I sat on the 11th of January, and I rose on the 4th of March, but I worked for several hours a day out of Court for a fortnight after; in fact, I have not quite completed the business yet; I have been anything but idle during what is called the vacation.

1058. When does term begin again?—On the 15th of April, and I shall sit without intermission, except perhaps for four or five days, when I shall be very much occupied in writing judgments, till the middle of July. When I rise in the middle of July I shall have a great deal of work to get through in writing orders and finishing up cases.

1059. When does your November term begin?—The second of November.

1060. That lasts, with a short intermission, till Christmas, does it not?—Yes. I sat up to Christmas-eve, when I was very much pressed, a few years ago.

1061. What are your judicial hours?—The same as the Lord Chancellor's; we sit to a moment at 11 o'clock, and I rise at about four. Lord St. Leonards was anxious to introduce 10 o'clock as the time of commencement, but the Irish Bar was very much opposed to it. I sit five hours, and sometimes more; perhaps if the business is over, I might rise a little earlier, but I think that is the average.

1062. Is not a good deal of your time occupied in the evening?—A great deal of my time; I do not think there has been an evening that I have had to myself of late.

1063. Knowing well your diligence and fairness, I will ask you whether you think that, with advantage to the public, your time could be more fully occupied than it is?—I cannot take upon myself to say that I could not get through more business; I might sit a week or 10 days longer than I do each term; but this I will say decidedly, I could not satisfactorily to myself perform the duty, after the fatigue of the day, of reading abstracts of title, with a view to conferring a Parliamentary title; I could not with safety to the public undertake that duty.

1064. If the duties of the Incumbered Estates Court, with the power of selling settled estates and unincumbered estates, were transferred to the Court of Chancery, and in the distribution of the labour some of it came to you, do you think you would be able to discharge, satisfactorily to yourself, the duty of a narrow inspection of the titles?—I could not, satisfactorily to myself.

1065. You have already expressed an opinion, that without a transfer, to prevent, in your opinion, the probability of arrears, upon the abolition of the Masters, two Vice Chancellors would be requisite; I need hardly ask you whether you think that judicial staff would be adequate if the transfer took place?—I entertain a very strong opinion, taking the Bill as it stands, that the four Judges, that is, the Lord Chancellor, the Master of the Rolls, two Vice-Chancellors, and their officers, could not perform the duties imposed upon them by this Bill, and also dispose of the arrears of the Incumbered Estates Court.

1066. Even without the arrears?—Without the arrears, I should doubt it very much. Mr. Hargreave, I observe, has stated that the current business of the Incumbered Estates Court is sufficient to occupy three Commissioners, who sit separately, and their officers, and that, in fact, the arrears would stand still,

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as I understand his evidence, if they were to go on with the current business. If that be true, of course the two Vice-Chancellors, if they disposed of the business of the Incumbered Estates Court, and the additional business of selling unincumbered estates, could scarcely perform, according to Mr. Hargreave's statement, the current business of the court. Now the effect would be this: if the Lord Chancellor and the Lord Justice were occupied by appeal business, the Master of the Rolls would have to do the whole of the business of the Court of Chancery, exclusive of that portion which relates to the sale of estates; and I entertain the strongest possible opinion that the Master of the Rolls could not perform that duty.

1067. If the change led to an arrear of the current business in the Court of Chancery, would not that be very injurious to the public in Ireland?—Very injurious; when once an arrear accumulates it becomes almost hopeless to get rid of it. If you look at the state of the Taxing Masters' Office of the Court of Chancery in Ireland, where an arrear has accumulated to an enormous extent, it originated partly from one Taxing Master being originally appointed, and from an enormous accumulation of untaxed costs having been sent to him from the Master's office; the arrear has now accumulated to such an extent that it is impossible to see how it is to be got rid of.

1068. Does this Bill, which purports to make the jurisdiction of the Court of Chancery perfect in all respects, provide a remedy for the arrear in the Taxing-office?—It does not, and it is quite essential that it should; if you examine any solicitors, I dare say they will explain more fully than I can, that it has a very injurious effect upon the suitors in this way: when funds are ordered to be distributed by me, and I make inquiry why the distribution of the funds has been delayed, I have been told by the solicitors that they have been unable to get their costs taxed; that they cannot distribute the funds until the costs are taxed, unless they set apart a sum to meet those costs, the amount of which it is difficult before taxation to ascertain.

1069. Does not a constantly accumulating hopeless arrear operate unfavourably upon the judicial mind; does not it relax exertion?—There is not the least doubt of the truth of that observation. A Judge naturally feels the strongest possible desire to keep down all arrears; but if you put him in this position, that it is impossible he can keep down the arrears, of course he will cease to sacrifice health, attempting to do that which is impossible.

1070. Will it not lead to the performance of the duties in a more perfunctory and less satisfactory manner?—I think so. Some years ago I got out a return of the amount of business that I went through in the time of the famine, when it was enough to break down any Judge; I ascertained that the number of orders I had made in one year was 4,950. If you calculate the number of days I had to sit, you will find that I had only, on an average, 12 or 14 minutes to each case; some cases lasted days, and many lasted hours; and then you will understand the enormous difficulty I had to get through that business.

1071. Have you looked at that portion of the Bill which relates to procedure and practice, sections 65 to 123?—Yes, I think I have.

1072. Have you any observations to make upon that portion of the Bill?—The Master of the Rolls for England, if I recollect rightly, suggested that this should be made the subject of general orders, and not the subject of legislation; the only objection I see to that is, that I believe almost all these clauses, at all events the great majority of them, are taken from corresponding clauses in the English Act of Parliament; I am myself such a very strong advocate for assimilation of legislation, that in that respect I had rather the clauses remained.

1073. It is incidental to this inquiry, and it is a grave subject; has any alteration in the law with respect to judgments and appointments of receivers taken place in Ireland?—Some general orders were made by the Lord Chancellor, which I have here; I think the effect has been that the Court of Chancery is in a much more favourable position than it was when I was examined in 1849; there have been alterations made in the law relating to judgments from time to time. There was an Act passed in the year 1849, which qualified the enactment of the 5th & 6th of William 4, and the 3d & 4th of the Queen; a further qualification has taken place by the Act of 1850, and now you cannot appoint a receiver as you could formerly, by a simple petition on the foot of a judgment; you may by what is called a cause petition. I am speaking of judgments bearing date subsequently to the Act of 1850.

1074. Has the effect of the provisions, which you have just stated, combined

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with other circumstances which are collateral, been to diminish the number of receivers in Ireland?—I should say decidedly. I believe the greater number of applications for the appointments of receivers are made before me. Without being able to state with any accuracy, I may state generally, that it appears to me that I have much fewer applications now than formerly.

1075. Is it not your practice to make reference to the Masters with regard to the appointment of receivers?—Always.

076. Upon the abolition of the Masters, how would that duty be performed; would it be concentrated under you, or distributed between you and the Vice-Chancellors, who are to be appointed under this Bill?—It is proposed, if I recollect rightly, to continue one of the Masters, who now acts as Receiver Master; of course if he shall be continued as Receiver Master, as I think he ought to be, he will be the person to whom the reference will be made.

1077. Will the check upon the appointment of receivers be diminished when the power of appointing is distributed among three Judges, instead of being, as it is now, concentrated under one?—I think it will be much the same; I think the Vice-Chancellors will probably act upon the same principles that I do.

1078. From the evidence which you have given formerly, it appears that you are of opinion that the appointment of receivers is a great evil, to be avoided as much as possible?—I think it is to be avoided as much as possible.

1079. Has not the tendency of recent legislation and practice been to diminish the number of receivers?—I think so.

1080. And you see no provisions in this Bill which would relax the fetters upon the appointment of receivers?—I think not; I think the law in that respect would remain what it is; I do not think you can get rid of the appointment of receivers.

1081. In your opinion it is a necessary evil, and the growth of it should be checked by all possible means?—I think so. There is a new class of cases in which I appoint receivers. In consequence of the accumulation of business in the Incumbered Estates Court, a long period elapses between the presentation of the petition and the sale; the creditor, the incumbrancer, files a cause petition in the Court of Chancery, and he prays for a receiver to keep down his interest, not for a sale; for you cannot sell in the Court of Chancery after an absolute order for sale in the Incumbered Estates Court. That is all fair and reasonable, because the only support a person might have might be the interest upon a mortgage or upon a judgment; it would be unfair to allow that party to be kept out of his interest between the interval of the petition being presented to the Incumbered Estates Court and the sale; it might be a period of three years.

1082. Have you any apprehension, if the power to sell incumbered estates in Ireland ceased, that the great evil of the appointment of receivers in an aggravated form would recur?—I entertain, as I said before, a very strong opinion against the existing law which relates to the transfer of land; it is in a most complex and unsatisfactory state; but the reform should not, in my opinion, be the giving of a Parliamentary title, and enabling a Judge to sell one man's estate to pay another man's debts.

1083. The keystone to your objections to the sale of unincumbered property with an indefeasible title, whether from the Incumbered Estates Court or from the Court of Chancery, is to be found in your plan for facilitating the sale of land, as stated before the Real Property Commissioners?—Yes; the difficulty, of course, in any plan, is to bring it into immediate operation. I have no hesitation in saying that if the plan I propose were adopted as to every estate now sold or to be sold under the Incumbered Estates Act, which itself would operate, or might operate, with a simple enactment as a registration of title, you could re-sell such property in 24 hours with just the same facility as you could sell Government stock; but it is some time before any plan can come into full operation.

1084. It would not be a judicial sale; it would be an open sale in the open market, would it not?—It would be a judicial sale in this way; you would order the sale to take place; the mode of sale would be just as if it was a sale out of court.

1085. Mr. *E. Ellice.*] The appointment of two Vice-Chancellors being, in your opinion, only a sufficient addition to the judicial power in the first instance, on the abolition of the Masters, for disposing satisfactorily of the ordinary business of the Court of Chancery, and as it would be impossible for a court so constituted

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constituted to undertake the additional duties of the Incumbered Estates Court, would it be, in your opinion, expedient to increase permanently the number of equity Judges, for the purpose of doing the business of both courts, without further experience of what might be a sufficient establishment for that purpose, and until a measure may be determined upon in consequence of a Commission which has been issued to inquire into the practice of the Court of Chancery?—I am of opinion that it is better, with respect to any arrangement to be made, to await the decision of the Commissioners to whom this great question as to the sale and transfer of land is referred, with a view to having similarity of legislation for England and Ireland, upon this important matter.

1086. Would it not, in your opinion, be inexpedient to establish permanently a number of Judges in the Court of Chancery in Ireland, which it might be difficult to reduce afterwards, until it was ascertained clearly what amount of business they would have to transact?—I think so; I do not approve of the plan which has been suggested, for example, of having a third Vice-Chancellor, with the view of getting rid of the enormous amount of business proposed to be given to the Court of Chancery by this Bill; I should wish every thing to remain very much as it is, until the nature of the English reform is determined upon.

1087. And, in fact, you think the alteration proposed by the Bill, so far as it transfers the duties of the Incumbered Estates Commissioners to the Court of Chancery, is premature?—I think it is premature.

1088. *Chairman.*] The Commissioners to whom you refer, are the Commissioners appointed to inquire into the subject of the registration of titles, with reference to the sale and transfer of land?—Exactly.

1089. Supposing your view should prevail, and that for the present the Incumbered Estates Court is continued, would there be any advantage in giving them the power of appointing receivers *ad interim*?—It would save the expense of a cause petition to the Court of Chancery, no doubt; but in a cause petition, the proceedings now are very simple under the Chancery Regulation Act, and I believe not expensive.

1090. It would appear that the same estate is subjected to the jurisdiction of two tribunals, pending the decision in the Incumbered Estates Court?—I think any temporary change is comparatively unimportant for the next year or two. There is no great expense in appointing a receiver, when a receiver is applied for in the Court of Chancery. I see a good deal of practical difficulty in giving the Incumbered Estates Commissioners the power. Would they refer to the Receiver Master, or would they have a Receiver Master of their own? The Receiver Master now appoints receivers upon principles established by some general orders laid down by the Lord Chancellor; there is a considerable improvement. The Lord Chancellor has, according to the view which I so strongly urged, made an order that practising solicitors and barristers shall not, in general, be appointed. He has also made general orders with reference to the Receiver Master not acting upon the nomination of anybody, but, in fact, selecting the receivers himself. He also points out in the general orders, that it is the duty of the Receiver Master to endeavour to establish district receivers, to ascertain some very respectable agent in a particular district, and if he is appointed over the estate of Blackacre, he should be appointed over the adjoining estate of Whiteacre. There is some very considerable improvement with respect to receivers by the present course of proceeding, though I do not think the matter is at all perfect.

1091. I think you have already stated, that if the Incumbered Estates Court is continued, you would abolish the appeal to the Privy Council, and would make the appeal from the Incumbered Estates Court, as from the subordinate courts in Chancery, to the Lords Justices?—I think so; it would ensure uniformity of decision; I think the Privy Council is as bad a court of appeal as there ever was in Ireland.

1092. Being yourself a Privy Councillor, you have a knowledge of its working, and you do not think it satisfactory?—I do not; I have not been in the habit of attending regularly; many Privy Councillors have but little to do; I have a great deal to do; but from what I have read of the judgments that have been given at the Privy Council, I will venture to say that if the Committee were to read and examine those judgments, and compare them with the judgments given by the Judges in the Court of Chancery, they will say that there never was an appellate jurisdiction which disposed of its business more unsatisfactorily.

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1093. Supposing the Incumbered Estates Court continued for a limited time, would you say that it was desirable to remove it to the Four Courts?—It is most desirable; in fact, the agitation which exists with respect to the transfer of the jurisdiction of the Incumbered Estates Court to the Court of Chancery has very much arisen from that circumstance. It is said that there is a species of judicial nepotism connected with the employment of barristers in the Incumbered Estates Court; there is the brother of one Commissioner, and the son and son-in-law of another Commissioner, and the great portion of the business is done by the son, the son-in-law, and the brother. I think that has created a very strong feeling amongst the Bar that it would, as a matter of public policy, be very desirable that the Commissioners should be sitting at the Four Courts or the neighbourhood, so as to open the whole court to the profession.

1094. The practical effect would be to render a close Bar an open Bar, and to subject it much more to the operation of public opinion?—I think it is of great importance that a Judge should sit in the presence of a number of members of the Bar; my court is crowded by a vast number of barristers, and I think I do my business better than I should with two or three barristers sitting opposite to me.

1095. You think the practical effect of moving the court to the Four Courts would operate the change which you desire with respect to the Bar?—It would. There is no accommodation for the Commissioners, therefore it is difficult to carry it out. I really do not know, if you pass this Bill, where the Vice-Chancellors would sit next Michaelmas term, nor have I the slightest notion where my chambers would be.

1096. Could you not build accommodation?—You could, but we should have no place to go to for the 12 months while you were building. I have got a private chamber for business, but I should require very extensive chamber accommodation under this measure, if it is to work at all. I was told that the English Judges had six chambers, one chamber for each chief clerk, one chamber for each junior clerk, one for the Judge, and one for the scrivening clerks.

1097. Is there much space belonging to the Government at the Four Courts unoccupied?—There is a good deal of space nearly opposite the Rolls Court, but there is this difficulty; it has been generally supposed that that space ought to be allotted, or a great portion of it, to building a proper room for the records of the Court of Chancery. The records of the Court of Chancery are in a very unsafe condition at present. I called the attention of the Government some years ago to the fact, which was not known, that those very valuable documents, in which the public have such a deep interest, are not in a fire-proof room.

1098. The courts for the transaction of daily business ought to be contiguous, but the deposit of records, if adjacent, need not be contiguous to the courts?—Perhaps not; whether the space would be sufficient for all the chambers of the court I should doubt; the chamber accommodation must be very extensive.

1099. There is one remaining branch of this Bill, namely, the fees and stamps; those provisions are upon the assumption of the transfer. The costs of fees and stamps in the Incumbered Estates Court are much less than upon sales in the Court of Chancery now, are they not?—I do not know of my own knowledge; I have heard that they are.

1100. Mr. *De Vere.*] With regard to the appointment of the Vice-Chancellor's chief clerk, you suggest that there should be a veto in the Lord Chancellor; do you think it would be better that the veto should be with the Lord Chancellor or the Lord Lieutenant?—I should care very little with which it was; I have not the slightest objection; no matter with which it is.

1101. In case the jurisdiction of the Incumbered Estates Court for the future should be transferred to the Court of Chancery, to what court would you entrust the disposal of the arrears; ought the present arrears of the Incumbered Estates Court to go with the future business, or be disposed of by the present existing court?—I have a very strong opinion against the arrears being transferred to the Court of Chancery, because I think it can be shown to demonstration that the court, as constituted under the Government Bill, could not by possibility dispose of them, and it would be swamped. The proper course, in my opinion, would be to allow one, at least, of the Commissioners, if not more, to wind up the arrears.

1102. Viscount *Monck.*] Do not you think it would be objectionable to leave a court in existence for the sole purpose of winding up arrears?—I cannot say that I see any objection; it was originally a temporary court; I do not understand

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stand why they should not wind up their arrears. The fact is, the whole history of these arrears being transferred to the Court of Chancery, I am bound to say, is not with a view to the interest of the suitors or the public; the object is just this, if the arrears go to the Court of Chancery, you get the Commissioners and all the officers along with the arrears; that is the whole history of the legislation.

1103. Do not you think that is a very desirable object in the present case?—I think not; I must say, that I think the Irish Bar will feel very strongly Sir John Romilly's evidence; he has conveyed, that when he made inquiries in 1849, he could hear of no conveyancer in Ireland except Mr. Longfield, and he also stated that he could not concur in recommending the transfer of the duties of the Incumbered Estates Court to the Court of Chancery, unless Mr. Longfield and Mr. Hargreave and their officers were transferred to the Court of Chancery. If you adopt that course, you will create the strongest possible feeling amongst the Irish Bar. Under the English Act, which I have here, I apprehend no Irish barrister could be appointed to the office of Vice-Chancellor in England; the word "barrister" is used without "barrister of England," but "barrister" in a statute which is confined to England means English barrister; and it would create the strongest feeling of dissatisfaction amongst the Irish Bar, and I take the liberty of saying, a very just feeling of dissatisfaction, if you are to open the judicial offices in Ireland to English barristers, there being no corresponding opening for Irish barristers with respect to English judicial appointments.

1104. Mr. *E. Ellice.*] Would not it be very much to the interest of both countries, that there should be an exchange of judicial appointments, Irish barristers filling English appointments, and English barristers filling Irish appointments?—I should be very glad if that practice was adopted, but I do not see the slightest chance of an Irish barrister being appointed to an English office. When an attempt was made in Lord Plunkett's case, I believe there were such proceedings taken by the English Bar as prevented that being carried into effect.

1105. Has not opinion changed since Lord Plunkett's time?—Perhaps it may; I doubt exceedingly if you will see an Irish barrister filling an English judicial appointment.

1106. Assuming that there is a change of opinion upon the subject, you would see no objection to the interchange of offices between the two countries?—None whatever; I think I may say that there are gentlemen practising in the Court of Chancery in Ireland at this moment who are as distinguished lawyers as there are in England.

1107. *Chairman.*] With regard to the continuance of the Incumbered Estates Court for a considerable length of time, if that should be the view of Parliament, would there be any advantage in bringing the Incumbered Estates Court under the control of the Court of Chancery, so that there might not be at the same time an independent jurisdiction dealing with realty and personalty?—I think, as I stated just now, that it would be desirable that there should be an appeal to the Lord Chancellor and the Lord Justice. I myself feel of course a difficulty in answering what the modes of arrangement would be with respect to dealing with a Parliamentary title; my opinion is against the whole course of proceeding as a permanent measure.

1108. My question was with respect to an *ad interim* continuance, whether, pending the abolition of that power, you thought any control might be safely or advantageously exercised by the Court of Chancery over the Incumbered Estates Court?—I should say decidedly; I would take away from the Incumbered Estates Commissioners the power they have of refusing to permit an appeal, although I believe they have not exercised that power; I would allow an appeal to the Lord Chancellor, and the Lord Justice, of which the Commissioners could in no respect complain.

1109. Assuming your view should be adopted, and the Incumbered Estates Court should be continued, would you on the whole recommend the other changes in this Bill, subject to the objections which you have stated?—Yes; I should recommend, in fact, the course of procedure of the Court of Chancery in England to be adopted as far as possible in Ireland; as far as it would not be inconsistent with Sir John Romilly's Act of 1850; that Act has worked in some respects very well, in other respects it has not worked well; and if a person was to take a copy of the English Act, and with a pen strike out those sections

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which were inconsistent with the Irish Chancery Regulation Act, and turn "Bill" into "petition," and make a few alterations of that kind, you would render the course of procedure in both countries very similar. In Ireland we have no demurrer or plea; you cannot demur or plead to a petition; I think that works very well. I used to hear all the demurrers, and I have had a very good opportunity of judging, and I have no hesitation myself in saying that pleas and demurrers are an ingenious contrivance for the purpose of causing expense and creating delay. The system of proceeding without pleas and demurrers works well, and I therefore should not be disposed to adopt from the English measure pleas and demurrers; I should make the course of procedure as similar as possible, except so far as our course of procedure works well.

1110. You would proceed to do that without delay, I presume?—I think so, at once.

1111. In the present Session of Parliament?—I see no objection whatever to that being carried out, except the difficulty of finding buildings for the Vice-Chancellors and the clerks; that matter has not been looked to sufficiently.

1112. Viscount *Monck.*] Would not the abolition of the Masters' offices give a great deal of room?—Not at present; the Masters' offices would be occupied by the Masters, in my opinion, in winding up their own arrears.

1113. Sir *E. Perry.*] If the opinion of Parliament should be that a permanent court should be established, do you think it would be desirable to give to the Court of Chancery the power of granting a Parliamentary title also?—I object to the Parliamentary title altogether.

1114. Supposing Parliament should take up the popular opinion in Ireland, do you think that both courts should have the same power, or would you confine it to this special court, with special duties?—If you at once determined upon establishing a Parliamentary title, I am disposed to think that the tribunal which exercises that jurisdiction solely, will exercise it more safely for the public.

1115. Do not you think it probable, if the Court of Chancery had also this power, that a Vice-Chancellor would be compelled to transfer the duty of reading the abstracts of title to his chief clerk or Master?—I think he would; that is one of the grounds upon which I disapprove of the whole course of this plan. Mr. Hargreave, it appears from his statement, deputes to his examiner the comparing of the abstracts with the documents; that is a most important duty to depute. In England the abstracts of title are drawn with great care; the course of practice in England, I believe, is this: if a solicitor draws up the abstract, he is responsible for the accuracy of that abstract, and it is sent to counsel unaccompanied with the deeds; in Ireland the practice always has been totally different. When I was at the Bar and received an abstract of title to give an opinion upon, there came an enormous mass of documents along with it, and I had the duty imposed upon me, and a most arduous and irksome duty it was, to see that the abstract was correct. In consequence of solicitors in Ireland not undertaking the duty of comparing the abstract, but casting it upon counsel, the preparation of the abstract in Ireland is not as accurate as it might be. According to Mr. Hargreave's statement, he gets his officer to compare the deeds with the abstract; supposing the officer does not do that duty properly, why, then you may have estates wrongfully sold.

1116. My question is, whether it is not more likely that the Judges of a court with this special duty would be better able to perform that duty than a Vice-Chancellor sitting with a general equity jurisdiction?—I think so; I think the evidence of Mr. Hargreave will establish that. Mr. Hargreave mentioned that he sat in chambers four days a week; you never can safely, in my opinion, give to any tribunal the power of granting a Parliamentary title, unless the Judge who reads the documents can read them in the morning, and you ought not to cast that duty upon a Judge when he is fagged. I can state for myself, after having been sitting for some months with my mind and body fatigued, that reading an abstract of title in the course of an evening would be inconsistent with the security of the public.

1117. The Committee understand that the practice in England of the Master of the Rolls and the Vice-Chancellors, is to sit nearly half-an-hour a day in chambers in the course of the week?—So I understand.

1118. If that practice is transferred to Ireland, the only opportunity that the new Judges would have of looking through the abstracts of title would be in that half

half hour, which is generally after the business of the day?—I think, in 99 cases out of 100, you could not read an abstract in half-an-hour.

1119. *Chairman.*] Are you not aware that, under the arrangement in England, there is a roster of conveyancers, to whom questions of title are transferred by the courts?—Yes.

1120. Therefore the examination in England of a difficult question of title would not be done by a clerk, but would be by order of the court transferred to an experienced conveyancer to report upon?—It would.

1121. Have you that division in Ireland of the conveyancing business, severed from the general duties of barristers?—No.

1122. Have you the same expertness with respect to title?—I think not.

1123. Therefore there is a want in Ireland which does not exist in England, owing to the great accumulation of business here, which has led to the subdivision of the labour?—Yes; I think, myself, from barristers in Ireland doing different classes of business, perhaps they are not in all cases so well acquainted with a mere matter of conveyancing. I think a Judge can decide upon a question of conveyancing as well as any English conveyancer, provided it is argued before him.

1124. Would it be possible, with your knowledge of the Bar of Ireland, to frame such a roster of barristers for reference from the courts on questions of conveyancing?—I think there are many members of the Bar in Ireland who, if they were appointed, could give an opinion that might be depended upon. If you adopted the principle of Parliamentary title at all, I should be disposed, myself, for the security of the public, to say, that instead of casting the duty upon the Judge, who cannot, in my opinion, perform it properly, I should be much more disposed to attach to each court a counsel of eminence, appointed by some such mode as to secure a proper appointment. I would throw the whole responsibility of granting a Parliamentary title upon him, who would have his mornings to devote to reading the abstracts.

1125. Can you conceive a better plan than having a roster of eminent conveyancers, if they can be found, to whom in each case the decision of the Judge with respect to title shall be transferred for close examination, and report consequent upon examination?—The difficulty of adopting the English principle appears to be this: conveyancers, as I understand, do not attend the court at all; they are sitting in their chambers all the morning, and that is the very place, and the only place, in which you can read and study an abstract of title. In Ireland the practice is for all barristers to attend court, and if a barrister was not in attendance upon the courts, the solicitors would think he was staying away and idling; he goes to the court, where briefs are generally delivered out, for the purpose of being seen as a practising barrister. There is a great deal of difficulty connected with appointing mere conveyancing counsel. If the counsel was appointed as a counsel attached to the court, with a salary sufficient to take him from his business altogether, I could understand, perhaps, that you might adopt that course with more safety than throwing it upon the Judge.

1126. Sir *E. Perry.*] Is it not desirable in a case of this kind, in which the operation is described as dealing with a matter of difficulty, to throw the utmost responsibility upon the party who is to pronounce upon the title?—Yes, if he has time.

1127. Is not that thrown upon the Commissioners under the present system; have you not a Court of Conveyancers, who have the utmost amount of responsibility, combined with the publicity of their proceedings?—I believe several errors have arisen in the Incumbered Estates Court.

1128. Is not that more desirable than giving the duty to a roster of conveyancers, who have not the same amount of responsibility or publicity thrown over their proceedings?—I think if you give a Parliamentary title, a tribunal which has no other duty to perform but selling estates, will be likely to do it more safely and better than a court which has an immense quantity of other business.

1129. If that system be continued, the objection has been made, that you will have two tribunals deciding upon the same subject-matter?—Yes.

1130. That has been stated by some to be objectionable; does any objection from that source occur to you?—I do not think any practical inconvenience to the public is accruing at this moment from the two tribunals. We have had two tribunals now in operation for some years, and I really do not think you would

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have heard all this outcry about the Incumbered Estates Court, or the transfer to the Court of Chancery, if they had been sitting in the Four Courts.

1131. In point of fact, have we not the experience in Ireland and in England of three or four courts of equal jurisdiction, causing no inconvenience to the public?—They cause no inconvenience.

1132. *Chairman.*] You pointed out a case in which the Court of Queen's Bench and the Court of Common Pleas operated very salutarily upon the same question?—Yes.

1133. Sir *E. Perry.*] If there are courts of co-ordinate jurisdiction, and there is a court of appeal, hearing cases from all of them, that remedies any inconvenience which can arise, does not it?—Yes; there is a court of Exchequer Chamber, in which all the Judges sit to hear writs of error from the three courts of law, and there questions of law are settled, as far as they can be settled.

1134. Is it your opinion, that if the institution is continued permanently, it will be safer for the public to have a tribunal like the present court, than to transfer the jurisdiction generally?—I think so.

1135. Mr. *De Vere.*] Am I right in supposing this to be your opinion, that the Incumbered Estates Court was first established in Ireland when the state of property in Ireland rendered exceptional legislation necessary?—I think so.

1136. From your knowledge of the present state of property in Ireland, is it your opinion that the state of property renders exceptional legislation necessary?—I am not disposed to think that exceptional legislation is further necessary. When all the estates in the Incumbered Estates Court shall have been sold off, there will be no more necessity in Ireland for such a measure than there would be in England. I admit at once that the law in relation to the transfer of land is in a most unsatisfactory state.

1137. Do you think the state of property in Ireland, when the arrears of the Incumbered Estates Court are worked off, will be so similar to the state of property in England, that the practice with regard to the sale of estates may be fairly assimilated?—Yes, and I think it ought to be assimilated.

1138. If the same jurisdiction were given in England, would you see any objection to its continuance in Ireland?—I should not, for this reason; I am strongly under the impression that if a Bill were introduced now to authorise the Court of Chancery in England to give a Parliamentary title, no Bill would ever be passed in the form in which this Bill is; it would become a great English question, and there would be no job; I think there is a job connected with almost every Irish Bill, and I think this Bill is not an exception to the general rule.

1139. You seem to admit, in answer to a question which was put to you, that the general feeling in Ireland is in favour of making the functions of the Incumbered Estates Court permanent?—I think it is; judging from what I have heard.

1140. Is that feeling, in your opinion, confined to the owners of land, or is it not participated in by those who are entitled to estates in remainder, and to contingent interests?—I think the general feeling is in favour of a Parliamentary title, but I think it arises from the circumstance that the effect of the despotic power which is vested in this tribunal is not very well understood at present.

1141. You have mentioned cases in which you thought persons entitled in remainder to contingent interests were liable to be swamped by decisions in the Incumbered Estates Court?—I think they are.

1142. Do you think the desire to render the functions of the Incumbered Estates Court permanent in Ireland is not shared by that class of persons?—I think it may be, from not exactly seeing what the effect of the statute is.

1143. Viscount *Monck.*] Do you refer to the practical effect of sales which have already taken place, or the possible effect of the law?—I may mention a case that occurred in the Rolls Court, to explain the insecurity of property; it occurred before myself. A receiver was appointed over an estate for two lives, a leasehold interest, at the instance of the incumbrancer upon that estate. The Incumbered Estates Commissioners, I dare say you are aware, when they sell the fee, are obliged to state the tenure of every tenant upon the estate; and in the schedule to the conveyance the tenure, the rent, and everything else is stated, and that is conclusive upon the tenants. A notice is served upon the tenant, stating his tenure and his rent, and calling upon him to show cause, if he

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he disputes the accuracy of that notice. In the case I mentioned, the Incumbered Estates Commissioners were selling the fee, and they described this interest for two lives as a tenancy from year to year, and the purchaser, who was guilty of no fraud, and knew nothing to the contrary, acquired a Parliamentary title, and he gave the tenant notice to quit, and the first thing we heard of it in the Court of Chancery was this Parliamentary title. The case was before me, and I was obliged to discharge the receiver, thereby, of course, doing very considerable damage to the creditors, and depriving them of their property. I was told afterwards that it was discovered in sufficient time. The fund not being distributed, the Incumbered Estates Court gave some compensation. But you are not to legislate upon the notion that parties who are deprived of their property may be compensated by the payment of a sum of money.

1144. *Chairman.*] The sales in the Incumbered Estates Court amount to 18,000,000 *l.*, and there have been distributed nearly 14,000,000 *l.* Considering the extent of that operation, and the difficulty of the circumstances, are you not of opinion that upon the whole very little injustice has been done?—I think very little injustice has been done, owing to the great care with which, I do believe and consider, the measure has been carried out by the Commissioners; but I have a feeling myself that it is dangerous to legislate upon the notion that you are to have a careful and efficient Judge. Sir John Romilly says he is for the transfer, upon the assumption that you are to appoint Mr. Longfield and Mr. Hargreave Vice-Chancellors, who have carried on the duties with such care. When I advert to any of the matters which have taken place, so far from seeking to cast imputation upon them, I have recorded my opinion that they have discharged their duties with caution and ability. I may mention another case which may surprise the Committee, and of which I have some personal reason to complain. I only mention it for the purpose of showing the insecurity of property. I was served with a notice from the Incumbered Estates Court, calling upon me to show cause why a long leasehold interest in a house which I purchased in Dublin should not be subject to a particular rent of upwards of 20 *l.* a year. The effect of that notice was this, of which I complain very much: I knew nothing about the title; I had not looked into the title myself, but I employed counsel to investigate it for me. I was obliged to take all the title-deeds out of my box to send them to a solicitor, to have the matter investigated. It turned out that it was not subject to that rent, but a head rent of about one half the amount. What was the consequence? my title was ransacked; it might have turned out to be a defective title. The whole principle of the Bill is this: instead of having the security of sitting down, as Lord Eldon expressed it in the Newcastle case, upon the box containing your title-deeds, you are called upon to expose your whole title. I think that is the extent to which the law goes. A case arose in the Court of Exchequer, the case of Rutledge *v.* Hood, which is reported in 3d Irish Common Law Reports, page 447, in which the question of Parliamentary title arose before the Court. Mr. Longfield, the brother of the Commissioner, was one of the counsel. He was asked by Pennefather, Baron, "You argue the question put by the other side, that if a party mortgage an estate which is not his own, the real owner being abroad, a conveyance from the Commissioners would be indefeasible." Longfield replied, "It may not be necessary to argue it, but I go that length." Pennefather, Baron: "My opinion is very strong against that view, but it may not be necessary to decide it." In principle, that is, that you may sell any man's estate, and take his property from him. I know of other instances, but they are few. I do not cast any imputation upon the Commissioners. The amount of property wrongfully sold bears a very small proportion to the property sold; but I am not looking at the matter with regard to Mr. Longfield and Mr. Hargreave, or any particular persons, being Vice-Chancellors, but the possibility of our having careless, negligent, and inefficient Judges to fill the judicial office.

1145. Viscount *Monck.*] Do you think we should legislate for Ireland upon that assumption?—Not upon that assumption; you should not in my opinion make the security of property depend upon a duty, and a most serious duty, being carefully performed.

1146. Mr. *Henley.*] Your opinion is that the security is not in the law, but in the vigilance with which it is carried out?—Exactly; which I think is an erroneous principle.

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1147. Is it your opinion, considering the number of years that the Incumbered Estates Court has been in practice, that any just conclusion can be formed yet as to any injustice that may have been worked under it?—I think not; with respect to the case of Lord Blaney, Lord Blaney is not married yet, and if that question arises, it will be upwards of 21 years from the date of his marriage; the tenant in tail would ask, "Where is my estate?" and he would be told, "It is sold and the purchase-money invested in the Three-per-Cents."

1148. Therefore it would be wrong to come to the conclusion that because a great number of instances of injustice have not come to light, others may not be discovered?—I think other cases will be discovered; everything depends upon the proper service of notices. Under one of the orders of the Incumbered Estates Court, the notices are served through an office called the Notice office; the solicitor having the carriage of the proceedings, furnishes an envelope, I believe, with the address upon it, which is to contain the notice which is to be fowarded by post; it is very easy for the solicitor, either by accident or design, to misdirect that letter; the Commissioner does not inquire whether that letter has ever come to hand. I can suppose this case: if any member of this Committee were entitled in remainder to an estate in Ireland, after the estate for life, the first he might hear after the death of the tenant for life, when he was looking after his property, might be that it was sold in the Incumbered Estates Court, and a Parliamentary title given.

1149. Mr. *De Vere.*] Might there not be a wrong service of notice in any court of law?—Yes; but an error in the case of a court of law does not produce irreparable injury; when the mistake is discovered it may be set right. You could not, by any such process in England, bar the right of the remainder-man.

1150. Viscount *Monck.*] I understood you to say that the security of property depended upon the vigilance of the Judge, and not upon the law?—Yes.

1151. Does not the insecurity of property depend, not upon the vigilance of the Judge, but upon the law, in the mode of giving notice?—I do not see that. Certainly the Judge could not, so far as the notice is concerned, by any vigilance ascertain that it was served properly; but Mr. Henley's question had more reference to the case of a question of title. I shall take a case that may arise. Supposing, under a family settlement, or under a will, a question arises, which constantly arises, whether a person takes an estate tail or an estate for life; if he takes an estate tail, you may sell for the payment of incumbrances affecting his estate, but if he is tenant for life you have no right to sell. The Commissioners, with the view of having the question argued, send the notice through the post; it is misdirected; they hear nothing more about it, and they decide that it is an estate tail, and the remainder-man, resident in England, may be deprived of his estate.

1152. Viscount *Monck.*] Are you aware that any such case has occurred?—I think the case of Lord Blaney is a strong case.

1153. Sir *E. Perry.*] May not the same objection apply to any judicial decision; for example, a judicial decision which gives the property of A. to B., which constantly occurs; may not some matter of fact be overlooked; some latent title that has never been brought forward affecting the question of estate for life or estate tail; and may not that erroneous decision, confirmed by the House of Lords and the rights of the party injured, be sacrificed for ever?—They can never be sacrificed for ever unless the party has had notice. A case which sometimes occurs is this: the process-server swears that he has served the process; if you apply to the court, and swear that you never were served, the court will always allow you to reinvestigate the matter. I am not aware of any instance in which a party can be finally bound by any proceedings of which he has not had notice, except in the Incumbered Estate Court.

1154. Mr. *Grogan.*] In reference to the court of appeal, a question was put to you as to the Lord Chancellor sitting alone as a court of appeal; do you consider, under any circumstances, that his sitting alone would be advisable, or would you place on every occasion another Judge with him?—I think it is very desirable that you should always have another Judge; I think an appeal from a single Judge to a single Judge can never be satisfactory; the different constitution of men's minds leads them to take different views; I think it is very desirable that you should have a judgment reversed by two Judges.

1155. Do

1155. Do the provisions in the Bill, in your mind, carry out that view fully?—There is one clause which would appear to be inconsistent with some other clauses in the Bill, which would allow the Lord Chancellor during the absence of the Lord Justice to dispose of appeals.

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1156. Mr. *Fitzgerald.*] You stated that you had laid before the Commissioners appointed to inquire into the registration of titles with a view to the sale and transfer of land, your suggestions as to the conveyance of land in future?—Yes.

1157. May I ask you whether, if no such plan should be adopted, and no reform in that direction attempted, you would say it was undesirable to continue the Court for the sales of the Incumbered Estates in Ireland?—There is some difficulty in answering that question. I look upon it as quite impossible, having regard to public feeling in England, that the law relating to the transfer of land in England can remain unreformed; it is in a most unsatisfactory state.

1158. If no reform is attempted at present, at any rate, would you say it was undesirable to continue the Court for the sale of Incumbered Estates in Ireland?—I disapprove very much of the system, but I confess I myself, individually, would be desirous to yield to public opinion in Ireland; my opinion is against the view of the public, and probably an erroneous view. I have felt it my duty to state my opinion to the Committee. I should be disposed, generally speaking, to yield to a sound view on the part of the public; and my opinion being against that, I should not presume to set it up against the view of the public. I merely state my own view.

Jovis, 17° die Aprilis, 1856.

MEMBERS PRESENT.

Sir James Graham.	Viscount Monck.
Sir Erskine Perry.	Mr. Kirk.
Mr. Henry Herbert.	Mr. Edward Ellice.
Mr. Henley.	Mr. W. Fitzgerald.
Mr. Whiteside.	Mr. De Vere.
Mr. Grogan.	

THE RIGHT HON. SIR JAMES GRAHAM, BART., IN THE CHAIR.

William Williams, Esq., called in; and Examined.

1159. *Chairman.*] ARE you a Member of the Law Society of England?—I am.

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1160. And a practising solicitor in London?—I am.

1161. Do you appear here to-day with the knowledge of the society?—I do; I am a member of the council of the Law Society, and I have been requested by the council, in consequence of a communication from Mr. Attorney-general for Ireland, to attend here.

1162. You are so obliging as to give the result of your personal experience, and that more or less of your brethren, of the working of the alterations which have been made in the proceedings of the Court of Chancery in England?—Yes.

1163. How long have those alterations been in effect?—Since the year 1852.

1164. With regard to the abolition of the Master's Office, had not much inconvenience been felt from the mode in which, in the first instance, upon reference from the Judge to the Master, the business had been transacted in the Masters' Office?—Very great inconvenience.

1165. The substitution of a chief clerk for the Master, under the direction of the Judge himself, has been in operation ever since the amended Act came into effect, has it not?—Yes.

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1166. How many years' experience have you had of the working of that alteration?—Between three and four years.

1167. Before a Master no case was continuously heard, was it; orders were given, with breaks in the hearing?—Yes.

1168. Did not great inconvenience arise from those interruptions?—Very great inconvenience.

1169. Every hearing before the chief clerks, such as it is, is a continuous hearing?—It is.

1170. From that circumstance, have you derived much advantage in expediting the cases of your clients?—Certainly.

1171. To what extent does the chief clerk exercise judicial powers?—It can hardly be said that the chief clerk exercises, strictly speaking, any judicial powers; his power is ministerial, and incidentally to that ministerial power occasionally questions of a quasi-judicial nature come before him.

1172. In cases heard before a Master, when you or your clients had reason to be dissatisfied with that decision, there was an appeal to the Judge in open court, with counsel heard?—That was the only mode, and then not till the Master had made a formal report in writing.

1173. Now, when the opinion indicated by the chief clerk is unsatisfactory, what is the course taken?—You can, in fact, prevent the chief clerk coming to a decision at all; you may say that you will insist upon the case being heard before the Judge.

1174. Does that hearing before the Judge generally take place in chambers, or in court?—It would always take place in chambers in the case I am now supposing, that the case is in chambers, unless the Judge should think fit to adjourn it to the open court.

1175. If the case were one of great difficulty, then the Judge would adjourn it to the court, and hear counsel, would he not?—Yes, and it would be done summarily, without the form of a certificate, or the form of any report.

1176. In your experience, which is large, are those hearings by the Judge in court exceptional, and rare cases?—Very rare indeed.

1177. Generally, a case in which difficulty arises in chambers, is summarily disposed of by the Judge himself?—Yes.

1178. Without the intervention of counsel?—Entirely so; counsel do not attend at chambers at all.

1179. What is the working of that practice with regard to expedition in the first place, and with regard to expense in the next place?—In both respects it is most satisfactory; not so satisfactory as it would have been if there had been more judicial power. The result of our experience is, that the chief clerks have rather more work thrown upon them than perhaps they should have, and that there is not enough facility for communicating with the Judge.

1180. Is any arrear accumulating?—I am not aware that there is any considerable arrear accumulating; but there is not the facility for communicating with the Judge that there would be if the Judge, instead of attending at chambers as he does, say twice a week for two hours after his court business is over, were in daily attendance two or three days a week at chambers.

1181. Is the practice of the Master of the Rolls and the three Vice-Chancellors uniform with respect to attendance at chambers?—I think it is. I am not aware of any distinction that exists between them at the moment; the ordinary practice is for the Judge to attend at half-past three or four o'clock two days in the week, which is not a convenient arrangement. I have been in attendance when 20 or 30 solicitors and their clerks have been waiting for their turn, and I have been kept two hours until my turn came to see the Judge. If an arrangement could only be made to provide a greater amount of judicial power, that would not take place. It must not be supposed that I am saying there is any want of attention on the part of the Judge; but the Judge being occupied in court every day can only attend after his court business is disposed of.

1182. Do none of the four Judges give a portion of any day in the week to the hearing of reserved chamber cases?—I am not aware at the moment that there is any arrangement by which any of the Judges attend at chambers, except after their court business is over.

1183. That is at the fag end of the day?—That is at the fag end of the day; that is an inconvenient time, and when they are of course fatigued with their day's work.

1184. Would

1184. Would any imperfection which you have discovered, or think you have discovered, arise rather from the want of a sufficient number of Judges, than from defects in the arrangement, or in the mode of transacting the business by the Judges themselves and by their clerks?—Quite so; it has a tendency to throw into the hands of the clerks more work than it was originally intended they should dispose of without intimate and frequent communication with the Judge.

1185. Have you any reason to view with jealousy any assumption of increased authority on the part of the clerks from this accumulation of business in their hands, or is there any difficulty of access to the Judge at all resembling the evils of the practice before the Masters?—We have not yet had any very serious reason to complain, but we think there is a tendency to that effect.

1186. Would you ascribe it altogether to the inadequacy of the judicial strength?—Yes.

1187. And not to any imperfection in the system?—Not at all; if the Judges had more time upon their hands and attended at chambers two or three days a week, not two or three afternoons or evenings, the result would be that they would exercise a greater amount of supervision over the business under their control than they can do at the present moment.

1188. You are aware that the Legislature last year, principally in consequence of the unanimous opinion of the Judges, added somewhat to the strength of the number of clerks employed?—Yes; but that was not adding judicial strength; it was adding ministerial strength.

1189. Should you say that the effect of that addition has been to remedy the evil in any degree or not?—That was an addition, if I recollect rightly, not of chief clerks, but of second clerks; the complaint was, that the business devolving upon the chief clerks was more than they could do, the result of which was, that they devolved upon their inferior clerks business of too great importance to be entrusted to them.

1190. Did that operate prejudicially?—I have heard cases in which complaints have been made, in which business has been thrown over to the inferior clerks, which ought to have been transacted in the ordinary course of business by the superior clerk, not because the superior clerk is indifferent to his work, but because he has more work devolving upon him than he can get through.

1191. Does that state of affairs continue up to the present time?—I think it does. I should mention that, although I have been deputed by the Law Institution to come here with reference to some questions which were put to them by Mr. Attorney-general for Ireland, I was not aware that I should be examined so minutely upon matters of detail, with which perhaps there are one or two gentlemen much more familiar, practically, than I am; for example, Mr. Field, of Bedford-row, who has a very large agency business, (my own business being entirely that of proper clients) would have more opportunity than I have of attending the Judges' Chambers, and of becoming intimate with the practical working. I know that Mr. Field generally concurs in the opinion I have expressed, because I have had occasion to see him, and mention the subject to him.

1192. Has the alteration in the procedure worked satisfactorily?—In many respects it has; I think the alteration has stopped short in one particular instance, that is, with respect to the mode of examining witnesses. You have now *vivâ voce* examination, it is true; but you have a *vivâ voce* examination before the examiner.

1193. Has the extension of the system of affidavits been satisfactory?—It is a great convenience.

1194. Is there not also some more summary mode of hearing, not proceeding by bill in the first instance; is that arrangement satisfactory?—For administration purposes it is extremely convenient; you have now the means of getting administration of a deceased person's estate by a rapid and summary process; a summons is taken out, and an order is made in the course of 10 days.

1195. And with comparatively little expense?—Very little expense.

1196. Then the initiative of each case, and the conduct of it up to a certain point, is, in your judgment and that of the gentlemen with whom you are connected, improved by the change?—Very greatly; they are improvements; the only doubt is whether the improvements have gone quite far enough.

1197. Power is given to examine witnesses *vivâ voce*, is it not?—Yes.

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1198. Has that power been largely exercised, or very rarely?—It is very rarely exercised by examining the witnesses in open court.

1199. Is it not open to the Judge, either in chambers or from the bench, to examine witnesses *vivâ voce*?—Yes; but there seems to be a very great reluctance on the part of the Judges to examine witnesses *vivâ voce* themselves; the examination takes place almost invariably before the examiner, and not in the presence of the Judge who hears the cause.

1200. Is it not open to the Judge, under the Act of Parliament, in case he thinks proper, to examine witnesses *vivâ voce*?—Yes, but there does not seem any great disposition on the part of the Judge to exercise the power.

1201. The examination, as heretofore, takes place before the examiner?—It does.

1202. Is the mode of examination before the examiner untouched by the alterations?—Certainly not; it is most materially improved. The examination is now conducted in the presence of the parties, either by their counsel, their solicitors, or agents; all parties are therefore present, and have an opportunity not only of hearing the evidence of the witness, but of cross-examining upon the spot.

1203. Heretofore it was a matter of chance whether the cross-examination traversed the examination in chief or not?—Entirely, and not only that, but it was actually a contempt of court to ascertain what the witness had said upon his examination in chief, in order that you might cross-examine him more accurately.

1204. The former practice proceeded very much upon the principle of exhausting all that the witness could possibly say, whereas now he is immediately cross-examined as to what he has said in the presence of adverse parties?—Yes; but the tendency of examining before the examiner is to prolong the examination of the witnesses to a most inconvenient extent, and at a very great expense. No sufficient control is exercised by the examiner, who knows nothing at all about the merits of the case, and who is not to hear the cause, as to the way in which the evidence is given.

1205. Your opinion would be that to make the examination perfectly satisfactory, the Judge who is to decide the case should hear the evidence?—Clearly; that is my opinion.

1206. You think the delegation of hearing the evidence to another person, that person being the examiner, even under the amended system, is not satisfactory?—It is not so satisfactory as if the examination took place before the Judge; on any disputed question of fact, the evidence should be given, according to my judgment, before the Judge who is to decide the case.

1207. Have you any observations to offer upon any other point with reference to the amended practice in the Court of Chancery?—No; I do not at this moment recollect that I have.

1208. Your principal objection, I believe, is with regard to the mode in which the evidence is taken?—And also the judicial power of the court. There is one subject upon which I might remark, although it is perhaps hardly strictly within the present inquiry, that is, the system upon which the solicitors are paid; it is a question which has a great deal to do with the administration of justice in the Court of Chancery; the mode in which a solicitor is paid; I speak according to the opinions which I believe are universal amongst the practitioners in Chancery.

1209. Do you refer to the revision of fees?—Not merely to a revision of fees, but to a revision of the mode of payment; the present mode of payment certainly has a tendency to prolong the existence of a suit.

1210. The alterations which were made bore immediately upon the emoluments of the solicitors, and tended greatly to diminish them, did they not?—No doubt they have had that effect to a very great extent, and as the solicitors think, most unfairly; while at the same time the alterations have increased the tendency, of unscrupulous solicitors, to accumulate fees; the mode of payment being upon each successive step in the cause. Under the old system it was quite competent for the solicitor to pay himself by getting through the business of the Master's Office rapidly; he would get the same amount of payment as if he spun it out for years. In many instances, if parties were disposed to facilitate each other, business might be carried through the Master's Office with the greatest rapidity, and it was to the solicitor's interest that it should be done.

1211. The

1211. The reduction of the number of things to be done, the solicitor having had fees heretofore upon everything done, has greatly reduced the emoluments of the solicitor upon the work done, unless that work be prolonged?—No doubt there is an inducement at the present time held out to solicitors to multiply their steps in a cause, to have as many attendances before the chief clerk as they can; there is no inducement held out to expedite the matter; the more attendances a solicitor can have before the chief clerk, the more he gets paid; under the old system he would get no more, whether the report was spun out for three months, or whether it was settled at one appointment.

1212. Then that revision of the mode of remunerating the solicitors would have a tendency to counteract the accumulation of work to be done, which bears hardly upon the present judicial strength?—No doubt it would; it would induce the solicitors to exert themselves to dispose at one and the same time of business which is now indifferently attended to, and spun out, simply because it is not worth the while of the solicitor to attend to it. It hangs about the chief clerk as long as possible, because there is no inducement held out to the solicitors to dispose of it.

1213. Whereas you think it ought to be expedited as much as possible?—A solicitor ought to have no more, if he had four or five attendances than if the matter was disposed of at once.

1214. Has not this matter been submitted to the highest authorities by the Law Society?—Yes.

1215. What you have now stated has been set forth at length in the document which was presented to the Lord Chancellor?—It has.

1216. Lord Lyndhurst is cognisant of it, is he not?—Lord Lyndhurst is, I believe, entirely cognisant of it.

1217. And partakes very much of the view which you have stated, that the fees ought to be revised with the least possible delay?—I had the honour of being a member of a deputation which waited on Lord Lyndhurst a year ago on this subject. Lord Lyndhurst appeared to partake of the views which the deputation then expressed.

1218. With your experience in England, if it were proposed to reform the Court of Chancery in Ireland upon the model of the alterations which have been made in England, would you not specially direct attention to those two points, namely, the consideration of the mode of remunerating the solicitors, and also the imperfection in the examinations in the Examiner's Office?—Yes; and there would be a third consideration, namely, that of providing sufficient judicial strength.

1219. The two great points which you would lay stress upon would be with respect to the taking of evidence in the Examiner's Office, and the mode of remunerating the solicitors upon the altered proceedings?—Yes; so that solicitors might have the inducement which it is reasonable to suppose that human nature would act upon, of being entitled to the same amount of remuneration where they did their business well and quickly, as they would get if they spun it out under the present process, and that regard should be had to the value of the property involved, and discretion vested in proper officers to remunerate the solicitors fairly, and according to their skill, labour, and responsibility.

1220. There are no other points arising out of your experience in England to which you wish to draw the attention of the Committee?—I think not; I was not quite aware that the examination would have taken this line, and therefore I am not so prepared as I might have been.

1221. Have you and your brethren experienced from the greater facility given by the amended administration of justice in the Court of Chancery, a larger influx of suitors to that court?—I think there has been certainly a larger influx of suitors.

1222. A perceptibly larger influx?—Yes; I am not speaking now of my own personal experience, my business being entirely proper business. I do not think that any perceptible influx has taken place in my business, but I have heard of it in other quarters.

1223. As a bystander, would you say that the increase was progressive?—Yes.

1224. Sir *E. Perry*.] You think the sound reform in equity proceedings is to throw as much judicial business upon the Judge as possible?—Certainly; I suppose that in Ireland it is very much the same as in England, that a very

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large portion of the business is administrative, and not judicial; the Judge should supervise the administrative business in his chambers, and his clerk, in fact, should be constantly in communication with the Judge upon all matters of a quasi-judicial nature; the clerk should not be called upon to perform any judicial duties.

1225. *Chairman.*] Under the new arrangement, is there not a roster kept of expert conveyancers to whom questions of title are referred by the different courts?—Yes.

1226. Does that reference work satisfactorily?—I think on the whole it works pretty well; I do not know that there is any special advantage from it; I do not know that there is any advantage even on the ground of expense. Perhaps on the ground of delay there may be some little advantage that you have not in the form of a report.

1227. If the Judge had to investigate a title and pronounce an opinion upon that title, would not the delay be quite interminable?—Quite so; I am not suggesting that that which is a special branch of the law requiring constant practice should devolve upon the Judge. I think there are very few Judges who would be willing to advise upon a title.

1228. Therefore you think the present practice of reference by a Judge in cases of title to experts in conveyancing is salutary?—I think so; I may add that the practice prevailed in effect under the old system of Masters; the Master never practically investigated the title, though you paid him for it. The advantage of the present system is that you only pay one person instead of two.

1229. Formerly you paid both the Master and the conveyancer?—Yes; the Master invariably sent the title to a conveyancer.

1230. Upon the reference of a title by a Judge, is the fee to the conveyancer paid by the party losing, or does it follow the destination of the cost in each case?—In that case it forms part of the costs of the suit; it generally arises not in a litigated case, but in an administration case, where the duty of the court is simply to realise the property and distribute it amongst the parties who are entitled to it; or, as is much more generally the case, where the court is the purchaser.

1231. Is the fee to the conveyancer fixed, or is it uniformly regulated with reference to the labour?—I believe they have some sort of internal regulation amongst themselves by which they mark their own fees; the fees when paid are subject to revision by the Taxing-master; but practically the fee which is marked is always allowed.

1232. If the fee were thought exorbitant, would it not be subject to observation and revision?—Some communication would be made; I am not aware that any very serious complaints have been made about it.

1233. On the whole, you think the practice which is now established, of reference by the Judge of questions of title to a roster of conveyancers gives satisfaction to the suitors and to your profession?—Yes, I have not heard any serious expression of dissatisfaction, except that it seems to give the conveyancing cousel a sort of vested interest, and that references are made to them in very common cases, where no counsel would have been employed. I do not think there is any very great advantage in those questions being referred to a roster of conveyancers, because it after all merely amounts to this, that you have six men between whom the business is distributed; they are very good men, but it is unimportant whether they are selected or anybody else who is competent for the work.

1234. Conveyancing is a branch of the law separate from the general practice in England, is not it?—It is quite distinct. Gentlemen who practise as conveyancers seldom or never go into court; they are not advocates.

1235. The devotion of their entire time to that one branch necessarily leads to great skill in the investigation of titles?—Clearly so.

1236. Is the body of conveyancers a numerous body?—Not at all.

1237. How many eminent conveyancers are there at the English Bar?—I think there are not more than 50 tolerably well known; I am speaking roughly.

1238. And the eminent men are much fewer, I presume?—Yes.

1239. Of how many does the roster consist?—Six.

1240. Is that roster satisfactory to your branch of the profession?—Certainly, I think

I think on the whole it is. It is not, perhaps, our province to make any observation upon it.

1241. Does the Judge who makes the reference select the gentleman, or is it given in turn by the four Judges?—I think it is given in turn; there is a rota kept at the Register Office; that is a matter of detail upon which my Chancery clerk could inform you better than I can.

1242. Sir *E. Perry.*] The titles upon which the roster of conveyancers in England have to advise are not like titles advised upon by the Incumbered Estates Commissioners?—No; conveyancing counsel are simply advisers.

1243. Therefore the doctrine of *caveat emptor* prevails?—Entirely so; the court gives no title at all. A sale under the court is just as likely to be impeached as any other sale.

1244. You say that the administrative business forms a very large portion of the duties of a Judge?—By far the larger portion, speaking from my own practice and observation. I have scarcely any litigated business at all.

1245. Is it not desirable for the suitors that the Judge should undertake as much of that administrative business as possible?—He should direct and supervise it, clearly.

1246. Is it not better for the suitor?—Yes, and I think the Judge should take a more active interest in the administration of estates under his care than he can do at the present moment from want of time.

1247. If the Judge had time, in your opinion, it would be beneficial to the suitors if he undertook the whole of the administrative business?—Yes, the Judge would have more control over the conduct of the parties than any chief clerk could have.

1248. Does not that point to the conclusion that in establishing any new system of equity procedure, the course should be to appoint more Judges, and fewer clerks and Masters?—Yes, more Judges; but I think each Judge would require, probably, the same number of clerks that he has now.

1249. You think it is important rather to increase the staff of Judges than the staff of chief clerks and Masters?—Yes.

1250. Is not the operation of the present system the other way, that the public are called upon to find more chief clerks, and not more judicial officers?—That has been the case; but it is not the tendency of the public, because I think, so far as the public have expressed themselves, it may be said that the public have asked for more judicial power. I am speaking of our body, as the representatives of the public; we come more into contact with the public than the members of the Bar do; we come into contact with our clients, which barristers never do, and we know therefore what the feeling of our clients is upon the subject.

1251. Was the pressure upon Lord Lyndhurst to create more chief clerks?—It was to create more Judges. If I had known that the examination would have taken this course, I would have brought with me the paper which was submitted by the Law Society, with a view to the reform of the Court of Chancery, to the Chancery Commissioners, and there the Committee would see that the proposal on the part of the Law Society was to appoint eight Judges.

1252. Do you recollect the Act which passed last year?—I am quite aware of it; it was looked upon as a makeshift, because the previous proposal had been thrown aside.

1253. Was that previous proposal for more chief clerks?—That previous proposal was for more Judges; the object was, that there should be a Judge always working in court, and another Judge always working in chambers; that there should be two Judges attached to each Vice-Chancellor's Court; that one Judge should always be at work in the court, so that the Bar might be kept in full practice; and that another Judge should be in chambers, which would be done in this way, by taking, alternately, three days a week, one day in court and one day in chambers, or three days in court and three days in chambers.

1254. I gather from you that the tendency of the present system is to throw more on the chief clerks than they can perform?—Yes.

1255. And consequently Bills have been brought before Parliament to create more chief clerks?—That is in consequence of the refusal of the Legislature to create more judicial power; the Legislature, refusing to give power in that direction, was asked to take the second best course; we said, "If we are not to have more Judges, give us more clerks."

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1256. You think the proper course would be to create more Judges?—Undoubtedly. The Judge should have more personal and individual knowledge of the cases under his care.

1257. I gather from you that *vivâ voce* evidence should be heard by the Judge?—I say that all evidence which is given *vivâ voce* should be given before the Judge; I do not wish to be understood as including formal evidence, which may be very conveniently given by affidavit.

1258. You think that *vivâ voce* evidence should be taken before the Judge, and not before the examiner?—Yes.

1259. Does not it follow, in point of fact, that true equity reform would be to create more Judges?—It is an additional reason.

1260. I presume you have had considerable practice, both in common law and equity?—I have personal acquaintance with common law, having been originally a student with a view to the Bar; I was the pupil of a barrister at the Common Law Bar; I have some knowledge of the practice at Common Law, but my business is a family business.

1261. You know the effect of *vivâ voce* examination?—Yes; I have attended trials frequently.

1262. Is not the chief value of *vivâ voce* examination that the Judge is able to see the demeanour of the witnesses upon each question put?—Yes.

1263. That advantage is lost in equity by employing an administrative officer to take evidence, and not a Judge?—Yes.

1264. Therefore, in introducing a new system in Ireland, the course would be, according to your views, not to follow the course which has been adopted here, but to create a sufficient number of Judges, who would be able to dispose of the business coming before them?—Yes.

1265. Viscount *Monck*.] Do you think the examination should take place in open court at the hearing of the cause?—Yes; so far as *vivâ voce* evidence is concerned; *vivâ voce* evidence is always directed to some point which is a matter materially in contest between the parties; all matters of unimportance could be disposed of by affidavit, mere formal evidence about deeds and so forth, which does not call for the presence of the court, could be given by affidavit; when the real question in contest is to be decided upon *vivâ voce* evidence, it ought to be given in the presence of the Judge who hears the cause.

1266. Mr. *Whiteside*.] With respect to the mode of giving evidence, you have made a distinction between proving matters not in controversy, such as signatures to deeds and matters of fact not in contest. Your opinion is decidedly adverse to proving disputed facts by affidavit, because there is no mode of cross-examining?—Not on that ground, because we have a right to cross-examine *vivâ voce*, upon an affidavit.

1267. With respect to the use of affidavits in matters of controverted fact, in your opinion can anything be worse than an attempt to get at the truth merely through affidavits sworn on each side?—It is most unsatisfactory; an affidavit, as every man knows, is in the language of the solicitor or attorney who prepares it; it is not in nine cases out of ten the language of the witness. It is reduced into a formal shape by the draughtsman, and necessarily must be so.

1268. *Chairman*.] Escaping the violation of the truth as nearly as may be?—That may be the tendency.

1269. Mr. *Whiteside*.] You referred to the sales of estates in this country under Courts of Equity; have you known many instances of estates being sold under a decree of the Court of Chancery, and the title upon being carefully inquired into afterwards was found defective?—I do not recollect at this moment any case of that description. It is quite likely to occur. I recollect a case; it did not occur in my own practice; but it is perfectly notorious, and it became the subject of litigation, and is a reported case in equity; it occurred in a Master's office, but it was a case of fraud.

1270. Practically speaking, in your own experience, you have not had any such case?—I have never had a case in which that occurrence has taken place.

1271. What would your opinion be of conveying private estates in England through the medium of the Court of Chancery; what machinery would you require if such a thing were proposed; what staff would it require?—I am not now prepared to answer that question, which is more connected with the registration question. I was examined before the Committee of the House of Commons which sat upon that question.

1272. What staff would be required for such a purpose, apart from the subject of registration?—It rather arose out of that question; it was one of the subjects upon which I was examined, that there should be some scheme for giving a Parliamentary title to land; and it was suggested that that might either be done by giving a warranty of title by the Government, after a previous investigation by the registrar, or by the Court of Chancery. Both schemes were suggested as being fit for consideration. I think it would be extremely convenient that there should be a power of giving a Parliamentary title.

1273. Common to both countries?—Yes. I think the present system of conveyancing is certainly most unsatisfactory.

1274. Sir *E. Perry.*] You think we might take a beneficial lesson from Ireland?—Yes, in many respects; but we ought to prevent an inconvenience which is not prevented in Ireland; an incumbered estate may be sold, and notwithstanding you have given a clear Parliamentary title, the purchaser may go on creating incumbrances immediately afterwards, until the estate gets into the same condition that it was in before.

1275. Mr. *Whiteside.*] With regard to England, suppose A. B. wishes to sell an unincumbered estate to C. D., what would be your judgment as to the practicability of transferring all such estates through the medium of the Court of Chancery; have you any notion as to what staff would be required to give a Parliamentary title, so as to bind those interested in the estate for ever, assuming it to be an advantage, and that it would be generally resorted to by the public?—I think it quite practicable to convey a Parliamentary title through the medium of the Court of Chancery; but before you do this, you would have a great many prejudices to overcome.

1276. Is it not your opinion that a Parliamentary title would be an advantage?—Clearly.

1277. Then would not people, according to their interest, resort to a tribunal that gave them the best purchase-money for their property?—Yes, when convinced that such was their interest.

1278. Taking that state of things for granted, what is your opinion of the mode by which, in England, you could carry out that scheme of transferring private estates through the Court of Chancery; what staff would be required?—A very considerable additional staff.

1279. Would 50 Judges do it?—I have never at all considered the question of what staff it would require. It would require a very considerable staff; but if it were a great public advantage, and the public paid for it, I do not think that would be a very material question. I am assuming that it would not be a burden thrown upon the country, but that you would make it form a burden upon the landed estates by charging such an amount of fees upon the sale of the estate as would, in point of fact, compensate the public for maintaining this additional staff.

1280. You might do that, but would it not be an operation of great magnitude and great difficulty?—No question it would, at first, but that would only be during the process of investigation of the titles antecedently to the new system being introduced of conveying by simpler machinery.

1281. Do you see any reason why the new principle of selling unincumbered estates by the machinery of the Court of Chancery should not be applied to both countries?—I think it ought to be common to both countries.

1282. *Chairman.*] Is it within the power of the Lord Chancellor, under the law as it now stands, to regulate the remuneration to solicitors, in the manner desired by the Law Society, without the further intervention of Parliament?—We consider it is. I am not aware that the Lord Chancellor has intimated any doubt about his power.

1283. Are there not certain powers, by the rules of the court, confided to the Lord Chancellor, of calling to his aid the Master of the Rolls and the Lords Justices?—Yes.

1284. In the opinion of the Law Society, this power, with respect to fees, is included within the authority so delegated?—I think so. Perhaps I may be allowed to state a fact which is perfectly well known, that the Lord Chancellor has under his consideration the issue of a new order.

1285. To effect the purpose to which you have referred?—To effect some improvement; I am not prepared to say what that improvement is.

1286. It is, as you and the Law Society say, within the power of the Lord

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Chancellor, calling to his aid the persons I have mentioned, to issue an order that would give effect to the view taken by the Law Society?—We conceive so; and we have not been disabused of the opinion that the Lord Chancellor has the power.

1287. Mr. *Whiteside.*] You have stated that there are 50 conveyancers in London?—That was merely a rough guess.

1288. Is there not an enormous quantity of conveyancing done in England by conveyancers in the provinces?—No doubt there are many local conveyancers; in every great town or city there is a barrister who practises as a conveyancer, and who advises the solicitors of that neighbourhood upon questions of importance.

1289. *Chairman.*] In cases of difficulty, do not they come to London for the best advice?—Yes.

1290. Do not solicitors transfer a great quantity of property throughout England?—A great deal.

1291. Mr. *Grogan.*] You have made some remarks with reference to a roster of conveyancers, and you intimated an opinion that you did not see any particular advantage derivable from having that roster?—I do not, unless it is to be assumed that the roster consists of men who are pre-eminent in their profession; there is no particular advantage derived from it if you could get men equally eminent; there is no special advantage in selecting six out of 50.

1292. That was the practice previously?—Yes. I am not aware that any disadvantage arose from the previous system, when the Master, upon questions of title, selected the conveyancer who was competent to advise upon the questions, and to go through the title, and advise the Master upon it.

1293. Were there any special causes which led to the introduction of the roster, that occur to you?—I am not aware of any particular call upon the part of the public for the change.

1294. You cannot see any special advantage derivable from that change?—No special advantage. In some cases there is inconvenience; for example, a gentleman who was very eminent in his profession, who is now deceased, was appointed very late in life, and the business in his chambers dragged on to a most inconvenient length, and very great complaints were made of the delay.

1295. Are the Committee to understand that the opinion of the profession generally is, that the old system by which the Master selected the most competent conveyancer to advise him on the question of the title to any particular property, was at least as convenient and as safe to the public as the present system of having a roster of conveyancers?—I am not prepared to put it quite in that way; I do not wish to express any very decided opinion upon it one way or the other. I have no opinion very greatly in favour of the present system, nor have I any opinion greatly against it. I do not know that it has excited any particular attention amongst our profession; there is no general dissatisfaction existing.

1296. *Chairman.*] Is not the present system of having a roster, a bar to any favouritism on the part of the Judge in referring to a conveyancer who might be either connected or intimate with him?—No doubt it erects it into a species of judicial office; there is that advantage.

1297. Mr. *Whiteside.*] You do not say it should be left to the Judge to select the conveyancer; he might take the youngest man at the Bar?—That is a matter of public policy. I was addressing myself to the practical convenience to solicitors and suitors. As a question of public policy, I think it is very desirable that there should be men who exercise a species of judicial office appointed.

1298. Mr. *Grogan.*] Do not you consider it would be satisfactory to the purchaser of property, that he should have the selection of the conveyancer to whose opinion he attaches the most weight?—I do not see what advantage there would be in giving the election to the purchaser; at the present moment the conveyancer is selected not for the purpose of advising the purchaser at all.

1299. Is he selected to advise the seller?—The only purpose for which a conveyancing counsel is employed by the Court is either to advise upon the title, with a view to sell, or to advise upon the title, with a view to purchase by the Court. The Court is either the seller or the purchaser. The cases are of this kind. In executing a trust for sale, for the purpose of enabling the Court to see what condition of sale should be imposed upon the expected purchaser, the Court sends the abstract of title to one of the conveyancing counsel, and says, "What

"What conditions ought we to impose upon the purchaser, in order to make out a title, and to save as much expense as possible to the vendor?" That is one case. The other case is this: the Court having under its administration funds which, under a will or a settlement, are to be invested in the purchase of real estates, has a proposal laid before it, that a portion of the funds should be invested, and that a particular estate should be bought. The abstract of title to the particular estate is then brought in before the Court, and the Court sends it to one of its conveyancing counsel, to advise the Court whether a good title is made out; whether the Court should part with the money, and invest the money under its control in the purchase of that particular estate. The case you are suggesting, therefore, does not arise; the Court is never called upon to advise upon the part of the purchaser, unless the purchaser is, in point of fact, the Court itself.

1300. I understand you to say, that in the case of a sale taking place upon the process you describe, it is not considered as conveying an indefeasible title; but it is perfectly open to the purchaser to investigate that title as he pleases afterwards?—Yes.

1301. A proposition has been submitted to you that a Parliamentary title shall be conveyed by the Court on the sale. If a purchaser purchases under certain conditions fixed by the Court, does not that necessarily imply that the Court convey to him a title in all respects perfect and indefeasible, subject to those conditions?—No, certainly not, at present; and if an indefeasible title is to be conveyed by the scheme suggested, this proposition, I assume, would be adopted, and form part of the arrangement, namely, that in the event of the title being defective some compensation should be given by the Government out of a fund provided by the Government by means of the office fees on sales, by the court. Therefore the counsel would be in that case the counsel for the indemnity fund. The purchaser would be indemnified. If I understand the suggestion which you put, by getting a clear Parliamentary conveyance, the purchaser would be purely indifferent who investigated the title; he would say, "All I want is the conveyance; I do not care about the title;" the title would be material to the persons who have to indemnify. There would be either an indemnity or not an indemnity. If there is to be an indemnity, the person who is interested in investigating the title is the person who would have to give the indemnity.

1302. What would be the case if there were no indemnity?—I do not know that anybody would be interested in it. Then it becomes a question of public policy whether you ought to pass a law conferring a Parliamentary title without giving indemnity to the persons who may be injured by that law which would pass their estate, although it ought not to be conveyed. That is a question of public policy upon which the Committee are the judge, and not myself, though I have a strong opinion that no such law ought to pass.

1303. Viscount *Monck*.] You have mentioned one case in which conveyancing counsel are employed, namely, upon the investment of trust funds?—Yes.

1304. If the conveyancer makes a mistake, the loss is to the *cestui que* trust?—Yes.

1305. Is not that pretty much an analogous case?—Not in my opinion.

1306. There is no indemnity fund there?—That is from the very nature of the transaction, which is only a form of making a voluntary purchase on a bad title. There would be no indemnity in the event of the fund being under the control of trustees, and the trustees, instead of throwing the duty upon the Court, bought the estate, and had the advice of counsel on the title; and being therefore not guilty of *crassa negligentia;* the loss would fall upon the fund; that is incident to the very nature of our law of real property, and connected with the present system, whether administered in or out of court.

1307. Is it not a loss to certain persons, in consequence of a judicial mistake?—Yes, or a *quasi* judicial mistake; but the Court is simply administering, simply taking upon itself the office of trustees, because the trustees refuse the duty.

1308. In point of principle, there is no greater objection to the conveyance of an estate with an indefeasible title, on the ground of a mistake which may be committed, and the exercise of the power to which you have just referred?—I do not quite follow that. There is the loss of the money fund. The estate is not conveyed, simply because the Court of Chancery has invested its money in

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the purchase of an estate in which there is no title. The person who has the rightful title is not in the least degree affected by the circumstance that the Court of Chancery has taken upon itself to invest its trust-money in the purchase of that estate.

1309. The person who has the rightful title is not affected, but the person who has the right to the money is?—It is a loss of the money, but not of the estate.

1310. It does not make much difference whether he loses his money or his estate, does it?—I think it does. There is no attempt on the part of the Court to give a Parliamentary title to an estate which belongs to somebody else.

1311. One objection which is urged to conferring a Parliamentary title, through the Court, upon an unincumbered estate, is, that if the Court makes a mistake as to the title to that estate, a great injury may be done to the persons both buying and selling?—Not as I conceive, to either the buyer or the seller.

1312. The person selling loses his title to the value, because you give a Parliamentary title?—The loss would fall upon the person to whom the estate belonged in right; it would not fall upon the seller or purchaser. A person who purchased from the Incumbered Estates Court would lose nothing; he would keep his estate. The person who would be the loser would be the person who had the right to the estate, which right was defeated by the Parliamentary conveyance of the Incumbered Estates Commissioners.

1313. That right would be defeated by a judicial mistake upon the part of the Court conveying an estate that it had no right to convey?—Yes.

1314. Mr. *Whiteside.*] Suppose A. has an unincumbered estate, and is only tenant for life; he wishes to sell to B., and B. wishes to buy; there being no question of litigation as to incumbrances pending, and there is authority in the Court of Chancery to sell that estate, the estate is sold, and a Parliamentary title conveyed; would you in that case give an indemnity to the ruined family of the tenant for life?—Certainly; and I should not give any opinion in favour of a system of Parliamentary titles except an indemnity fund were provided.

1315. *Chairman.*] Has not some relaxation taken place under the Chancery Amendment Act with regard to parties not present?—Yes.

1316. The old rule in equity was, that no justice should be done to anybody unless it was certain that justice was done to everybody?—Yes.

1317. That rule has been somewhat relaxed?—Yes.

1318. And notice being given even in the absence of the parties when notice is proved, the Court proceeds to adjudicate?—Yes, in some cases without notice; the Court holding the trustees for certain purposes to represent the whole fund, would not call the *cestui que* trust before the Court.

1319. That relaxation of the strict rule in equity was very considerable; has any injustice been done by its operation?—No, I think not.

1320. Do you think justice has been fully done under it?—I think justice has been done. I think that the parties interested are substantially before the Court under the present system. Either a person represents a class, or has a duty to perform towards absent persons, which the Court assumes he will perform, and therefore does not call them into Court to see that they do perform it.

1321. You think justice has been more speedily done under the amendment, and injustice you do not think has been done?—No; justice has been done.

1322. Mr. *Whiteside.*] You may serve notice in any part of the world?—Yes, and if you do not pray relief against the party you may serve him with a copy of the Bill, and bind him by the proceedings.

1323. Are you acquainted with the system of the taxation of costs in the Court of Chancery in England?—Yes.

1324. Within what time, if you put in a bill of costs, could you get it taxed?—It depends to a considerable extent upon how many parties are interested in the taxation. If several solicitors are interested in the taxation of the costs, it is difficult to get the Bill through; it takes a long time.

1325. Supposing an ordinary case of two or three solicitors?—It may be done if all the parties will concur; the thing may be got through easily enough, but it is still a troublesome process, and occupies a considerable time. I am not in the habit of attending personally to the taxation of costs. It rather devolves upon my Chancery clerk to attend to those matters.

1326. Mr. *Henley.*] Could you get a bill taxed in six months?—Yes, certainly; not under a month or six weeks, or two months if it is a heavy bill; it may be

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four or five months, and in some cases I have known instances in which a bill has been hanging over for two or three years. *W. Williams, Esq.* 17 April 1856.

1327. *Chairman.*] Are the cases rare in which long delay takes place?—Yes; but I do not think there is a sufficient staff in the Taxing Office.

1328. Is there any considerable arrear in the Taxing Office?—There seems to be considerable difficulty in getting appointments; therefore I assume there is an arrear.

1329. Mr. *Whiteside.*] Does not the distribution of the purchase-money of an estate await the taxation of the costs, if the costs are to be paid out of fund?—In most cases, unless a fund is reserved for the payment of costs.

1330. You cannot tell what they will be?—No.

1331. *Chairman.*] On a motion to pay the money out of Court, enough may be reserved to pay the costs?—Yes, that may be done; I do not think the delay would be very great where the parties have anything to receive in cash; the pressure from without would be too strong.

1332 You have rarely a bill of costs that takes two years to tax?—I am not aware of many cases in which a Bill has been so long in taxation.

Mountifort Longfield, Esq., LL.D., called in; and Examined.

1333. YOU are a Judge, I think, of the Incumbered Estates Court in Ireland?—Yes. *M. Longfield, Esq., LL. D.*

1334. Have you filled that office since the year of the first erection of the Court?—Yes.

1335. How many years is that?—It will be seven years in August, since 1849.

1336. Your colleague, Mr. Hargreave, has informed the Committee that you have sold land to the amount of 18,000,000 *l.*, and have distributed to the amount of nearly 14,000,000 *l.*?—Yes; I think that is about the amount.

1337. Have you an arrear of business in your Court?—There is nothing that I could call an arrear of business in my office. There is, of course, a great deal of business undone; that is not an arrear until it is ready to be done. I am up to the business of my office. We do not call a cause in arrear because a petition is presented. If a petition is presented, and is fiated, and the abstract is brought in, I read the abstract in the next vacation to its coming in. If short, I frequently read it during the term. As soon as the searches come from the registrar, I settle the schedule of incumbrances, and as soon as they are ready to be heard, I hear them. There is a great deal of business undone; but in my office nothing that would be called in arrear if it occurred in another court.

1338. Mr. Baron Richards takes no part, except in the appellate business, does he?—He does. We found the business, about three or four years ago, come to such a pass, that he was compelled to take a portion of the chamber business also.

1339. Is the whole business now distributed amongst the three Commissioners?—All the business that has come in since that period has been equally distributed; before that a great rush of business had come into the office, but he has got as much as we have got from a certain date.

1340. He does the more recent business, which is equally distributed; the old business was distributed between you and Mr. Hargreave?—Yes, exactly.

1341. Supposing a fresh petition comes in for a heavy sale, in the present course of the transaction of your business, how long would it take before that sale was effected?—It would entirely depend upon the facilities which the solicitors have for making out the title; also a great deal upon the activity and intelligence of the solicitor himself. Until the title is made out, we cannot sell; it might happen that the owner of a heavy estate might have an abstract ready drawn; in that case I would read it in the first long vacation, and give an order to settle the rental; and to settle the rental I would give the first vacant day (in my case every Tuesday) to allow it to be advertised.

1342. Does Baron Richards investigate titles, as well as you and Mr. Hargreave?—Yes.

1343. How do you distribute the business amongst yourselves, equally, case for case, or is there any selection?—No, case for case. The solicitors contrive sometimes to make some selection; we do not take much trouble to prevent it; we do not permit it as a rule, and it is not often done.

1344. An ordinary case, without any undue or intentional obstruction, coming into your Court now for the first time, how long would it be before the sale

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was effected?—I should say very nearly two years, or three years; that would be about the average; some are sold in nine months, others take a much longer time; it entirely depends upon the title. Where a mere incumbrancer by judgment presents a petition, there is every difficulty made to his making out the title, where he has no assistance from the family who own the estate.

1345. Do the three Judges, before awarding the sale, investigate the title personally?—Yes, each of them.

1346. Is that a heavy duty?—It is.

1347. Do you delegate any portion of the investigation?—It has been explained that the comparison of the deeds with the abstract is delegated; we cannot do that.

1348. To whom is that delegated?—To the person who is called our examiner; he may be called the chief clerk just as well.

1349. Has each Judge his own examiner?—Each Judge has his own examiner, selected by himself.

1350. Have you seen the Bill prepared by the Attorney-general for Ireland and Mr. Horsman, proposing to transfer to the Court of Chancery for Ireland the duties now performed by the Incumbered Estates Court; that Bill proposes to transfer the duties hitherto transacted, and the arrear of business which is not yet complete; what is your view with respect to the time which would be occupied in clearing that arrear, if the transfer were made as this Bill proposes?—Arrears in that sense they may not be called; there might be one or two slow cases hanging over; there would be no arrear under the new Vice-Chancellors, as they would have no current business except what was fresh; they would never have much to do; if there was not that arrear, the Vice-Chancellor might almost take leave of absence the first year.

1351. This Bill proposes, that whereas there are now three Judges in the Incumbered Estates Court, of whom Baron Richards is one, that henceforth there shall be only two, in the persons of the two Vice-Chancellors, to conduct all the current business, now transacted by three Judges, in the Incumbered Estates Court; to overtake the arrear and in addition to perform all the judicial duties now fulfilled by four Masters?—Indeed, I think so.

1352. With your knowledge, first of all, of the duties confided to your Court, and next your general knowledge of the business transacted by the four Masters, independently of any arrear, do you think that two Vice-Chancellors would be equal to the transaction of the current business?—Yes, that is my opinion.

1353. Of the Incumbered Estates Court, and the judicial functions now performed by the Masters?—Yes.

1354. You would not think it necessary that even with regard to those arrears in your own Court, the services of the four Masters should be continued?—I think it would be desirable to give the Lord Chancellor the power of continuing the services of the four Masters for the business which they have at present under what is called the 15th section of the Irish Chancery Regulation Act; that that should be continued if the Lord Chancellor found it expedient; you would then have a reserve against pressure, or anything that might necessarily take place. The present Masters have a great deal of business in which they act like original Judges, not like Judges' clerks. I would propose to continue that power to the Masters so long as the Lord Chancellor, as the head of the Court, thought it necessary; so that there would be a reserve to do the business in case the Vice-Chancellor were oppressed. But I could give my reasons why two Vice-Chancellors would be able to perform the business.

1355. My question does not assume any fresh judicial duties with regard to the sale of property, but it is confined to the transfer of the power of selling incumbered estates with the arrear such as it is, and the duty to be performed henceforth by two Vice-Chancellors, which has hitherto been performed by the four Masters; will you state your reasons for thinking that two Vice-Chancellors would be adequate to the discharge of all those duties?—Substantially, two commissioners are doing it at present. If you take the quantity of money distributed by Baron Richards, you will find how very small the proportion is. At present the Commissioner's time is thus occupied: I have one day in the week that is almost entirely occupied by auction sales; at least a day is destroyed. I should not propose to have the Vice-Chancellor an auctioneer. I think it is a waste of judicial force to have a Judge performing what can be done as well by his clerk; that is one day saved to him. We have two days in a week occupied in hearing

appeals

appeals from ourselves in every case in which a person is dissatisfied with a commissioner's order; we thought it the proper course of policy that he should without much expense or difficulty imposed upon him by technicality be entitled to say, "I prefer the opinion of three Judges to the opinion of one." Accordingly, in the nature of an appeal by a simple motion, he gets his cause heard by three Judges; hence I may say, that each Commissioner has three days in a week occupied by what would under the new system be sent to the Judge above, or to the chief clerk below. I am doing a great deal of work now, from the inadequate assistance I have, that the chief clerk ought to do. I have schedules of incumbrances every Monday. I make my rulings upon each incumbrance, specifying its priority, and the mode in which the interest ought to be computed; the day from which it ought to be computed; and everything else that I think requires judicial investigation. That schedule comes before me the following Monday on an allocation drawn by the solicitors according to those rulings. I have to go over that allocation, and very often to correct it. I have had to correct the computation of income tax. I remember one case in which a party had computed the income tax upon the principal. I have to correct most minute details. I think a competent chief clerk would do that perfectly well, and relieve the Vice-Chancellor from a considerable portion of those details by which a Judge has his time taken up.

1356. Do you feel confident that a chief clerk appointed by the Castle would relieve the Judge from those duties?—If that was done I do not think the two would work well together. I think it is essential to the system that the Court shall have the appointment of its own responsible officer and the making of its own rules. You shall say to the Vice-Chancellor, "Make any rules you like; appoint what help you like, but you, and not your clerk, must be responsible to see that no mischief is done." If you appoint a chief clerk for him, the tendency is (I refer to the tendency common to human nature) to throw as much of his responsible business as he can upon the chief clerk; and if harm occurs, he says, "It was not my fault; I did not appoint him;" but if the Judge appoints him himself, he cannot shake off that responsibility.

1357. The Bill now proposes that the Masters shall be abolished; the Committee understand you to suggest, that in lieu of that abolition four of them shall be retained, with a view of enabling the Lord Chancellor to transfer any business which might be found too onerous for himself and the two Vice-Chancellors to the Masters?—No. In case the whole business was too onerous, then the Masters should continue their present jurisdiction, which is the jurisdiction under the 15th section, precisely as they do at present. I do not propose to delegate the new business from one to another. I think, in the sale of incumbered estates or unincumbered estates, if you give a Parliamentary title, it is indispensable to throw upon one man the whole painful responsibility of seeing it done correctly. If you give him a clerk appointed by another person, you set his mind at ease.

1358. You object to that portion of the Bill which vests the appointment of the chief clerks in the Lord Lieutenant?—I think it is contrary to the policy of the Act, of throwing all the responsibility on the Judge.

1359. You would suggest some alteration in this Bill in that particular?—In that particular section all the jurisdiction given to the Masters by the 15th section of the Irish Chancery Regulation Act should be continued to the Masters until the Lord Chancellor shall certify that it is no longer necessary that they should have it.

1360. Is that a large proportion of the existing business of the Court?—It is a fair proportion; it is not a large proportion. They do it very well, and are perfectly competent to do it. I would not run the risk of swamping the Court of Chancery with too many Judges, when I have men who are competent to do the work.

1361. Your suggestion would be to create two new Vice-Chancellors, and almost indefinitely to continue the Masters?—Yes; the Masters would be so continued, and I would retain the power of putting the work upon them.

1362. Viscount *Monck*.] You would not appoint new Masters?—I would not. I am satisfied the work would be in such a state before they died out, that the proposition would perhaps be to reduce the number of Vice-Chancellors.

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1363. Mr. *Whiteside.*] You would reduce the number to one Vice-Chancellor?—To one Vice-Chancellor.

1364. *Chairman.*] You would not at present abolish any of the Masters?—No, till I felt my way.

1365. To the first branch of the Bill you have the objections which you have stated, that the patronage of the clerks and the whole staff of the Vice Chancellors is vested in the Castle; your next objection is that this Bill contemplates the abolition of the Masters, and you think that at present would be premature and dangerous?—I think it would be premature and dangerous. I should not like to see competent men dismissed, and possibly the staff found insufficient.

1366. What do you say to the Court of Appeal here proposed?—I think the Court of Appeal would work. I think it is desirable there should be a Court of Appeal in Ireland, not taking away the ultimate appeal to the House of Lords.

1367. You, sitting in the Incumbered Estates Court, have the power of refusing an appeal, if you think fit, have you not?—Yes.

1368. You would not, under any circumstances, leave to the Vice-Chancellor the power of refusing an appeal?—Certainly not.

1369. If your Court were continued, would you recommend that the power of refusing an appeal should be continued?—No; I do not think any Judge should have the power of refusing an appeal from himself. I think his feeling of certainty depends rather upon a hot head than a clear judgment. I do not think that a Judge being confident is an additional proof that he is right.

1370. That being your principle, have you looked at the provisions of this Bill, by which the Lord Chancellor of Ireland may sit to hear causes in the first instance, yet sit as the sole Judge of appeal in a cause that was heard before himself?—Yes; the party if he chose might go to the House of Lords. I know that the hearing before the same Judge is often very beneficial. The Lord Chancellor hears the case fairly, and alters his judgment.

1371. The principle you laid down by your former answer would appear to be hardly consistent with that practice of the Lord Chancellor hearing an original cause, and sitting as the sole appellate Judge from his own decision?—No, he does not; there is an appeal from him to the House of Lords. The Lord Chancellor would be the most suitable appellate Judge in Ireland, but it would never do to have the decision of the head of the law reversed by an inferior Judge, call the man what you may. If you give any man the power of reversing the decision of the Lord Chancellor, there must be an appeal from him, and there ought to be, to the House of Lords.

1372. You are aware that this Bill provides that the Lord Chancellor shall always sit as one of the appellate tribunal in Ireland?—Yes.

1373. A Lord Justice sitting with him?—Yes.

1374. But there is a clause in this Bill which provides that the Lord Chancellor may sit alone as an appellate Judge?—Yes.

1375. Does that clause meet with your approbation, that the Lord Chancellor shall sit as the sole judge of appeal?—It may be convenient, and I have no doubt it will be found in practice that he will always take care to have another judge of appeal with him; I think a court of appeal should consist of more than one generally.

1376. Should not the Legislature take steps to provide that he does not sit as the sole Judge of appeal?—I do not think it is important. I would rather have two Judges than one. It may happen, inasmuch as the Lord Chancellor is a politician, that the people may have more confidence in the lower judge.

1377. If the Incumbered Estates Court is continued, and the appellate tribunal as proposed by this Bill should be instituted, you would not recommend that the appeal from your Court should be to the Privy Council, as at present?—No.

1378. That portion of this Bill would be satisfactory to you which constitutes one sole court of appeal in Ireland?—Yes.

1379. Whether the appeal be from the Vice-Chancellor performing the functions of the Incumbered Estates Court, or whether the appeal be from the Incumbered Estates Court continued as it is, the appeal ought to be to that new tribunal?—Yes, I think so.

1380. With regard to procedure and practice, have you looked at that portion of the Bill from Clause 65 to Clause 123?—I have read the Bill.

1381. Does that branch with regard to the sale of settled estates appear to you

you to be a matter germane to this Bill, or a necessary part of it?—It is not a necessary part; it is a useful part; it would be just as good in a separate Bill. It is a matter of very little moment; it is part of the new jurisdiction given to the Lord Chancellor.

1382. Will you refer to Clause 151; with your experience in selling incumbered estates by way of relieving them from incumbrances, would it appear to you a salutary enactment that the consideration might be a rent-charge without limit, approaching as closely as possible it may be to the whole rental of the estate?—It is a jurisdiction which, if I had the power of administering it in the Incumbered Estates Court, I should be very slow to apply. A case might occur in which it might be convenient, but I think the Court would very seldom act upon it.

1383. Would that appear to you a judicious mode of relieving an incumbered estate?—It would not relieve an estate from its incumbrances.

1384. Would not it have the opposite effect of making an incumbrance perpetual upon the estate?—Certainly.

1385. That clause you would probably not sanction?—I think it would be very little resorted to; I should see no objection to striking it out; it would be a very harmless clause in effect.

1386. In respect to the enlargement of the jurisdiction of the Incumbered Estates Court, having now so much business, that if a petition for sale were presented, it would occupy somewhere near two years, what would be the effect of enlarging the jurisdiction of the Incumbered Estates Court to sell unincumbered property as well as incumbered and settled estates in Ireland?—I think it would give us a little more business.

1387. Not much?—Not much; men now constantly put incumbrances upon their estates for the purpose of bringing them within our jurisdiction, which certainly may seem absurd; it is forgotten that a man may for a few shillings, under the Judgment Act, put a judgment upon his estate in the nature of a mortgage which enables him to sell the estate.

1388. It brings him within the purview of the Incumbered Estates Act?—Yes, and it is impossible to distinguish it from a real one.

1389. If your jurisdiction were extended from incumbered estates to unincumbered and settled estates, practically no land would be sold in Ireland, except through your instrumentality?—I think most of the land would be sold through our instrumentality, but there are a great many cases which would not come before us; for instance, a person having a flaw in his title would prefer to sell it with a condition of sale, than bring it to our Court. In the same manner, when the value of an estate was small, the party would wish to avoid the expense of our Court. We are obliged to have a great number of advertisements relating to sales, and I think they are important to prevent a fraud being practised; it is possible when an estate is small that it would not pay for those advertisements. In order to secure the public (by the public I mean the persons who may have an interest which we do not know) we impose some expensive advertisements on the estate. If a man had an estate with a bad title he would not bring it into our court, which would expose his bad title; and if his estate had a simple title, and was of small value, he would complain of the burdensome advertisements which we found it necessary to load him with.

1390. Your Court being the sole conveyancing machinery of Ireland, would not a person with a doubtful title, not venturing to come into your Court, be placed in the position of having his property altogether unsaleable?—He would have to explain what the flaw was to the purchaser; we will suppose he was a tenant for life, and some contingent remainder might spring up and defeat it; he would have to show that to the purchaser, and say, here is a contingent remainder, which is a direct flaw in my title; it may come to nothing, but I propose to sell.

1391. What is your view, considering the extent to which the sale of incumbered property has been carried in Ireland, as to the necessity of extending the power of sale with indefeasible title to unincumbered property; do you think that equity demands it?—I do not think that equity demands it, because I do not think it makes a mere unincumbered estate more difficult to sell than it was before; a man has the best reason for not bringing an unincumbered estate into our Court, because he says, I am not qualified; I have no incumbrance upon my estate.

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1392. If he sells not through the medium of your Court, his title, as conveyed, is open to challenge?—It is.

1393. Is not that a penalty affecting the fee-simple value of the property?—It would be a penalty affecting the fee-simple value of the property, whether our court were in existence or not.

1394. Has not the quantity of land brought into the market through the medium of real incumbrances, or almost fictitious incumbrances, such as you have described, filled the market with land to such an extent as materially to affect the value of unincumbered property sold in the open market?—I do not think it has; we have created a land market; people with small sums of money buy small lots of land instéad of lending it to the neighbouring squire, where they see no more of their money; in that way we have brought into existence a class of purchasers that did not exist before.

1395. You do not feel the necessity of extending the power of sale to unincumbered estates?—I do not see the necessity of it; I think it would be a desirable thing.

1396. What is your view of the policy of it in equity; if it be not expedient in point of policy, is it desirable?—I do not think it is necessary, or required by justice; but I think it is politic and expedient.

1397. Do you extend that observation to settled property?—I think it is desirable; in fact, wherever there is not the power of sale and exchange, you may say it is almost always the mistake of the conveyancer; and I think it would be desirable that the court of equity should have the power of saying whether it was good policy to sell a settled estate; that is, for the good of the family.

1398. To return to the two Vice-Chancellors, to whom the duties of the three Judges of the Incumbered Estates Court are to be transferred, if your policy be adopted, and unincumbered estates and settled property are to be sold as a matter of right by the ordinary court, do not you think the accumulation of business would be overwhelming?—I think not; if it was, I think you had better appoint a third Vice-Chancellor, when found necessary, than appoint too many at first. I think the Judge had better have too much to do at the beginning than too little.

1399. You would rather begin with a chance of arrear than take precautions against an arrear?—Yes; if you have too strong a judicial force, you produce a habit of tardiness and slowness of action that will always adhere to the Court.

1400. You do not think that a Judge, feeling that the arrear is so accumulating, notwithstanding all his exertions to keep it down, is disheartened by that circumstance?—I have not found it so; I have had more to do than any Vice-Chancellor will have to do.

1401. Have you arrears pressing upon you?—No, I am up to my current business; I dispose of my abstracts in the vacation; I am sometimes writing to the solicitors to know why their abstracts of title, their schedules of incumbrances, and schedules of searches, are not got ready, and that is sometimes done to me.

1402. How is it that there is in your Court this mass of business still untransacted?—Because there is a great mass of business coming in every day of the year; our court was supposed to exist only for three years, but we inherited all the arrears of the Court of Chancery for 70 years; we had such cases occur, 40 years, and so on; we had all those arrears brought suddenly upon us, but we are now more than coming up with our business.

1403. You decide either by yourself sitting alone, if there is no appeal, or upon appeal, with your colleagues, upon the distribution of the proceeds of the sale?—Yes.

1404. In the performance of those duties equitably as between the parties, which are transacted by the Master of the Rolls and the Lord Chancellor, are you bound by the same rules?—Yes, certainly; and we give the same people the money that we believe the Lord Chancellor would give it to.

1405. You decide the relative claims of the parties by the same rules of equity?—Yes.

1406. According to your view, the duties to be performed by the Vice-Chancellor will be exactly the same as the duties now performed by the Commissioners of the Incumbered Estates Court, with reference to the distribution of the proceeds

ceeds of the sale?—Certainly; except that the Vice-Chancellor would not have so much of what I would call clerks' duty, as I have now; he would have competent clerks to do it; for instance, a schedule of incumbrances would be sent to the clerk, and an allocation of the schedule would be drawn according to the rulings; then the Vice-Chancellor would read it over, and see that it was in conformity with the rulings, and if no one objected he would sign it.

1407. Upon the assumption that the power of selling incumbered estates was extended to unincumbered and settled estates, two men would have to investigate all the titles, speaking generally, of all land sold in Ireland?—Yes, they would.

1408. Do you still express to the Committee a confident opinion that they would have time and power themselves to transact the business without delegation?—Yes; I have compared the business with my own, and seeing how much business would be taken from me by a Judge of Appeal, and how much business would be taken from me by a competent clerk, I do not think a Vice-Chancellor would have so much to do as a Commissioner in the Incumbered Estates Court would have to do at the present time; however, a great deal would depend necessarily upon the additional business brought in by the voluntary jurisdiction; that is, jurisdiction respecting settled estates, and unincumbered estates; I can only guess at that.

1409. You do not think that load would be overwhelming?—I should hope and expect not; of course we cannot tell what effect it might have; I do not think it would be more than they would be able to do.

1410. It would not be possible to distribute any portion of that business to the Master of the Rolls, I presume?—He would not take it.

1411. He having been appointed previously to any such transfer, and declaring himself to be quite unable to encounter it, you can look for no assistance from the Master of the Rolls?—Certainly not, against his will.

1412. In the absence of that assistance, you still think the two Vice-Chancellors would be equal to the transaction of that large amount of conveyancing business?—Yes.

1413. Mr. *Ellice*.] You state that it may be necessary, for some time, to keep up the Masters; by retaining the Masters, would you not prevent the assimilation of the practice in Ireland to that lately introduced into England?—So far it would; the business that the Masters do is similar to that done in England, only it is done by two different men; the Masters do all the business in administration suits; probably the Lord Chancellor, in the whole progress of the suit, does nothing.

1414. In your opinion, is it not important to introduce into the Court of Chancery in Ireland the reform which has been introduced in the Court of Chancery in England?—Yes.

1415. Do not you think that any delay in introducing those reforms would be injurious to the administration of justice in Ireland?—I think it is better that the reform should be introduced and the assimilation take place as soon as possible; but I would reserve the right of delaying these reforms, if I found that the judicial staff was insufficient.

1416. Which do you think would be the most inconvenient to attempt, to throw the whole business of the Incumbered Estates Court upon the Court of Chancery, with two additional Vice-Chancellors, or to suspend the introduction of the English practice into the Court of Chancery; which would be the most inconvenient with respect to an amended administration of justice in Ireland?—I do not think there would be inconvenience in either.

1417. Not in suspending the introduction of reforms from England?—I think all the reforms from England would by that system be introduced, except that portion of the practice relating to the administration of estates, in which I think it is not of much importance that the reforms should be delayed.

1418. Which of the reforms could not be introduced?—All the reforms could be introduced except that relating to the question of the administration of estates, and the kind of business the Masters now conduct.

1419. The Masters' offices could not be abolished for any time you could now state?—No; the mischief is not in the name of Master; the mischief is in the Judge not deciding the thing himself, but writing out a reference for some other Judge to decide; the other Judge, instead of deciding it, makes a report, and the case is sent back from one to the other, and neither party is completely responsible for it.

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1420. You are not confident that the measure proposed in this Bill of immediately abolishing the Masters and assimilating the practice of the Court of Chancery in Ireland to that of the Court of Chancery in England, could be accomplished if the whole business of the Incumbered Estates Court were now transferred to the Court of Chancery?—I am not confident of it, but I believe it.

1421. *Chairman.*] There are now three Judges in the Incumbered Estates Court?—Yes.

1422. The proposition of this Bill is to abolish those three offices, to abolish the Masters, and to appoint two new Judges as Vice-Chancellors?—Yes.

1423. Your proposition would be to retain the Masters, to have two Vice-Chancellors, and to abolish the three Judges of the Incumbered Estates Court?—Yes?

1424. The effect of your proposition therefore would be to have six Judges where there are now seven?—No, I say I would only have the power of keeping up the Masters as a reserve in case the Lord Chancellor found it necessary to keep up any of them; I do not say it would be necessary; but where you have able competent men, and have them paid, I would not part too readily with the power of employing them.

1425. The effect would be that there would be two Vice-Chancellors and four Masters instead of the three Judges of the Incumbered Estates Court, and four Masters at present?—In fact, there would be two Vice-Chancellors and as many of the five Masters, not four, as the Lord Chancellor thought it necessary to retain.

1426. Mr. *Fitzgerald.*] The Masters are Vice-Chancellors as far as regards cases under the 15th section of the Irish Chancery Regulation Act?—Yes.

1427. That will be two Vice-Chancellors for the general business and four Vice-Chancellors extra for the limited business under the 15th section?—Yes, I would have them merely as a reserve; it is a choice between that and appointing another Vice-Chancellor; it would be a matter of discretion for the Legislature to say which should be adopted. I think the other Vice-Chancellor would be rather better.

1428. *Chairman.*] What would be the objection, instead of appointing two Vice-Chancellors to allowing matters to go on as they are, the Incumbered Estates Court continuing, an appeal being given as a matter of right, and an appellate tribunal instituted, which should be common to both the Incumbered Estates Court and the Court of Chancery?—I think the present Incumbered Estates Court, according to its present constitution, is utterly inadequate to its work, and that great mischief would arise from continuing that jurisdiction. It was very well adapted for the rough and ready work it had to perform when it was first appointed. It ought never to be extended without giving it a stronger staff than it has. I shall point out some remarkable differences. It was by no means fitted for a permanent court. It was found very well calculated to work as a temporary court.

1429. It has worked so well as a temporary court, that according to your evidence there is no arrear?—Yes; but I believe there is an arrear in one of the Commissioners' chambers.

1430. Sir *E. Perry.*] Would not those objects you describe be accomplished by transferring the Court to the Four Courts, and giving the present Court a better staff than it has?—I do not think it is of much importance whether you call men vice-chancellors or commissioners. You would accomplish one of the objects by removing the Court to the Court of Chancery; but you would be keeping up a distinction between the Incumbered Estates Court and the Court of Chancery. Every point of law required to be decided in the Court of Chancery is equally liable to be decided in the Incumbered Estates Court. It is a bad thing to have two different courts performing the same kind of duty.

1431. If there is a court of appeal from both of those courts, how does that operate injuriously to the public?—For instance, if you have stamps and rules different in one from the other, you have the public flocking into that court that affords most facility.

1432. In fact, upon that doctrine your Court has worked extremely well, and it seems to be very popular in Ireland. The question arises, why not leave well alone; why not continue your Court, altering the locality, and making it a branch court of the Court of Chancery for the sale of incumbered estates?—I would

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I would like it to die with a good character. I do not think it will do that if you continue it. I think the rough usage it is getting from the public is such, that no Judges or Commissioners can continue to act under it. It is a monstrous thing to treat a Court and its officers with insult and injustice, and yet commit the whole landed property of Ireland to their care. I have two chief clerks who hold precarious places; they are liable to be turned out at any time. The salary of one is 400 *l.*, and of the other 150 *l.*, because they belong to the Incumbered Estates Court. In the Chancery Receivers' Bill you propose salaries, which I think are not considered enormous, for the chief clerks of 800 *l.* and 300 *l.* That is double ours, and their work will not be nearly as difficult, as responsible, or as important as that thrown upon our clerks. The Accountant-general in the Court of Chancery has a place for life, with 1,200 *l.* a year: ours has a salary of 600 *l.*, and a precarious place. I think that course of dealing, if it continues, will be most mischievous to the public. It never answers, permanently, to entrust important duties to underpaid men.

1433. Mr. *Fitzgerald.*] You say that the Court is a precarious Court, and the staff is insufficient and underpaid; the question is, whether, with a satisfactory staff properly paid, it would be better to retain the present Court as the permanent Court?—I think the two proceedings would never be carried out; in the next place, you make a distinction; you may have one Court at one time full, and another empty. I think where the Courts have the same kind of business, the less division of labour there is amongst them the better. It is better to have a division made by the Lord Chancellor than to have a certain number of Judges to do one class of business which may slacken and become very small; you may have one branch of the Court overloaded, and another underworked; you would have the same amount of work thrown upon all if the Lord Chancellor had the power of distributing it.

1434. Sir *E. Perry.*] That could be obviated in this way, could it not: if the business of the Commissioners was to diminish, could not you diminish the number of the Commissioners or Judges; there are two or three at present?—The business might diminish or increase. It is not so ready a thing to procure an Act of Parliament to reduce or diminish the number of Judges. Of this you may be certain, whatever number of Judges you appoint in any court, they will always appear to have so much to do as to make it necessary to keep them up.

1435. The Committee have been hitherto informed that it is dangerous to appoint too few judges to do this work?—You are much more certain to have judges calling out that they have too much to do, and calling on the Legislature to appoint an additional Judge, than, if they had too little to do, suggesting a decrease in the number.

1436. You are presenting a different class of fears, are you not?—No. I say, in the various changes which have taken place in the progress of the business, you never can know how the whole quantity of business will be distributed; therefore it is a bad thing to say that the Judges in this Court shall only take one branch; it would be as absurd as to say that a certain Master shall only deal with receivers, and another shall deal with administrative suits, and so on. By a slight change in the habits of the people, you may have one man idle, and another man hard at work. I would rather the business should be distributed by the head of the Court than by the Legislature.

1437. Viscount *Monck.*] Has not the effect you have described actually occurred in the Common Law Courts in Dublin, that one Court has had little to do whilst another was very full, having a similar jurisdiction?—Yes, it did happen.

1438. Legislation has provided against that state of things?—Yes.

1439. Did not you say at this moment your business consists of two classes; namely, sales, and the distribution of the proceeds of the sales?—Yes.

1440. Did you also say, that at this moment, in your office, you are so well up to your business that you are trying to get the solicitors to bring the business on for discharge, and not trying to overtake the business?—I am both trying to get the business on, and trying to overtake the business.

1441. Take the investigation of titles first?—With regard to titles, every long vacation I am able substantially to clear off the abstracts, with very trifling arrears.

1442. Mr. *Grogan.*] And the current business?—Yes; I am frequently urging the solicitors with respect to the distribution of the money.

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1443. Viscount *Monck.*] In your Court does each Commissioner sell property and distribute the proceeds in his own office?—Yes, he does, unless an application is made in Court to the three Commissioners.

1444. Is the state of business in the other offices the same as in yours?—I believe, in Mr. Hargreave's it is substantially the same; I believe in Mr. Baron Richards's it is different. It is not to be expected that he can be a Judge of the Court of Exchequer and keep up with us.

1445. That is with reference to the sale of estates; with reference to the other branch of the business, the distribution of the proceeds of the sales, have you an arrear?—No.

1446. Do you distribute the proceeds as fast as the business is brought forward?—As fast as we think it prudent; there is a certain length of time necessary for advertisements to run. If I had less business, it would not diminish the interval of time between the sale and the distribution.

1447. In point of fact, there is no fund in your Court, the proceedings for distributing which are ripe for decision, in which the fund has not been distributed?—Certainly not.

1448. Is the case the same in Mr. Hargreave's office?—The same. We are able to distribute the money in a short time after the sale; but from the nature of a Parliamentary title it is desirable that there should be a little delay.

1449. Any delay which occurs is not from the inability of the Court to overtake its business, but from the solicitors not being ready with the business for your decision?—Yes; and also in some cases not wishing to sell, because only a certain number of lots can be sold in a day.

1450. *Chairman.*] Are you acquainted with Lord Blayney's case?—Yes.

1451. It has been stated that as soon as the Incumbered Estates Act was passed, Lord Blayney presented a petition to the Incumbered Estates Court, his estate having a very trifling incumbrance compared to its value; about 8,000 *l.* or 10,000 *l.* was the amount of the incumbrance, and the Incumbered Estates Commissioners sold the whole of those estates for 180,000 *l.*; the effect of that is said to be this, that if Lord Blayney had a son, and his son came of age, upon looking for his paternal estate, he would be told that it had been sold and disposed of by a course of legal proceeding in Ireland, and he must look to the 3 per cents. for his money; is that an accurate description of what occurred in Lord Blayney's case?—That is not the manner in which I would state the case. There is some truth mixed with it. If you will permit me I will tell the story in my own way. I wish to state that I read over the papers in Lord Blayney's case in my office, and if any honourable Member wishes for further information I will prove it by the documents. When the first Incumbered Estates Act was passed, Lord Blayney presented a petition to confirm a contract which he had made for the sale of the whole of his estates for 180,000 *l.* It was under the first Incumbered Estates Act, before there were Commissioners appointed at all, when the jurisdiction was vested in the Court of Chancery. The case came before the Master of the Rolls. The incumbrances were not 8,000 *l.* or 10,000 *l.* (which makes the story more piquant), but they were between 38,000 *l.* and 40,000 *l.* The Master of the Rolls was struck with property to the extent of 180,000 *l.*, being sold to pay 40,000 *l.* worth of debts. There was also a proposal to sell the estate discharged of a jointure, whereas the jointuress was not assured. It then stood over, and Lord Blayney got the consent of the jointuress, dated the 7th of December 1848, and on the 18th of December 1848 the Master of the Rolls, on the case being stated to him, thought it was perhaps not an unreasonable case to sell for the 180,000 *l.* He referred it to the Master to inquire whether there was any improper contract between the tenant for life and the purchaser; also whether 180,000 *l.* was a fair price for the estate, and also whether it was expedient to carry out that contract; and the Master found those three matters in the affirmative, that it was the fair value, that there was no private contract, and that it was expedient to carry out the contract. The intended purchaser in that case went off his contract on some other grounds; it was not convenient to find the money. Then, under our Act, having the authority of the Master of the Rolls and the Master, Lord Blayney got a new purchaser for 180,000 *l.* He presented a petition to the Incumbered Estates Court, which came before me. I read the documents, and having the sanction of the Master of the Rolls that a case might occur in which it would be proper to do it, and having the report of the Master that it was ex-

expedient

pedient to do it, looking to the grounds made in the report that the property was rather small, it consisted of a noble mansion and domain, and of some outlying property, if you sold the mansion and domain without it, you would get nothing for it, almost, in Ireland. It is a kind of thing sold at a third of what the value would be to the old owner; on the other hand, if you sell the outlying property, it must be sold with the mansion, otherwise the purchaser would have no property to look at; the family would be locked in without an estate; they would not have enough to gravel the walks or glaze the windows to keep up the place. Under those circumstances, it was held to be an indivisible estate, and better sold altogether. I thought it right to sell the property, and after paying the debts the balance would be invested in an estate more beneficial for the remainder-man.

1452. The sum obtained in your Court was the identical sum for which the Master of the Rolls was prepared to sanction the sale under his jurisdiction?—I did not say that he would sanction it, but unless he intended to sanction it on getting the report, I did not see the meaning of sending it to the Master to ascertain whether it was expedient.

1453. Did the Master report that 180,000 *l.* was the fair value of the estate?—Yes; and he reported it was expedient that the contract should be carried out. The Master's report bears date the 20th of September 1849.

1454. In the large transactions which have occurred in the sale of eighteen millions worth of property in the Incumbered Estates Court, is it not probable that some errors must have been committed, and some accidental injustice done; have any well-authenticated facts come to your knowledge, showing that unintentionally injustice has been done to any considerable extent?—No; I have computed that 1,500*l.* is the fiftieth part of a penny on the amount of purchase-money would rectify every mistake which we have made. I wish further to say, with respect to Lord Blayney's estate, that the Master of the Rolls, in ignorance of what took place, gave what appeared a very strong reason, that it was from a love of the Three per Cents. that Lord Blayney effected this sale, and that his son, upon looking for his estate, would be told, "You must look to the Three per Cents.; it is in the Consols that your estate is invested." That is not exactly the case. The Act of Parliament makes a provision for what is to be done with the money. When there is a surplus, it is to be invested. Until it is invested, it stands, subject to the same uses. I have already invested 60,000 *l.* or 70,000 *l.* in the purchase of an estate under the trust of Lord Blayney's settlement.

1455. Mr. *Grogan.*] Under your own supervision?—Yes, with a Parliamentary title; and my belief is, that, exclusively of the funded property, the son, if he comes into existence, will from that alone have a more valuable property than would have descended to him if merely enough had been sold to pay the debts. The estate produces a larger income, and is in every way more eligible.

1456. *Chairman.*] You have resided constantly in Ireland during the exercise of your judicial powers, honestly convinced that to the best of your endeavours justice has been done; still the rumour of any failure of justice would have reached you?—I think it is most probable it would.

1457. Have many cases in which errors have been committed by you or your colleagues been brought to your knowledge?—No. The errors respecting the sales of estates have always been what I may call mere part-and-parcel questions, which are always, from their nature, of very trifling moment; because the disputed possession has generally arisen with respect to property of no value, such as mountain, bog, or cabins paying no rent, and things of that kind, and it is difficult to say where the right lies.

1458. Upon looking back, do you think that you would have reason to regret any decision of importance with respect to sales, in which the interest of absent parties has been defeated?—I think not; I have never known any instance of any importance. Another case was mentioned by the Master of the Rolls, in which a lease was defeated, owing to there being a receiver over the estate. It was supposed that the life in the lease was dead; no one set up a claim, and the estate was sold discharged of the lease. The estate was sold subject to incumbrances, and no incumbrancer looked after it. The effect ultimately was that the value of the incumbrance was given out of the fund. No doubt there might have been harm done if it had not been found out before there was a transfer of the funds.

1459. You think that the harm done has been trifling?—Yes.

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1460. What good has been done?—The good which has been done is, that the estates have fallen from insolvent owners, men who were too greedy to do justice to their good tenants, and too poor to enforce their rights against bad tenants. The estates have been transferred from such men to men who are just to their good tenants, and able to give them encouragement, and help to improve their land in many instances; and if they do find idle and bad tenants they have got rid of them. I think in that manner the agricultural produce of Ireland is rapidly improving, and the social condition of the people also.

1461. From your knowledge of the condition of Ireland, both before the Incumbered Estates Act was passed, and after it was passed, can you, in your judgment, ascribe any material portion of the improvement you have mentioned to the operation of that Act?—I think the benefit which has arisen from that Act is, that the lands which have been transferred to new owners have, in many instances, given employment to perhaps twice the number of labourers that were employed before, and there has been a very great improvement effected on those lands.

1462. Has a larger amount of capital been expended on land during the last 10 years than in any period within your memory, in Ireland?—I believe so, indeed.

1463. And profitably?—Most of it has been profitably expended.

1464. Sir *E. Perry.*] Do you consider that, in the event of this court being made permanent, it would be desirable to provide any fund for the possible cases of injustice that might arise. You have had nine years' experience, and, having regard to all contingencies and errors, and occasional oversights being committed, and some cases of hardship occurring, have you turned your attention to providing a fund for indemnity in such cases?—I have, and I think it is inexpedient.

1465. You think that the possible evil is so small?—Yes; I would be afraid of doing anything that would make the Judge and the officers less scrupulous and conscientious. It is a terrible responsibility hanging over a man that he is irretrievably conveying an estate, and doing an injustice that can never be repaired. Also many false claims would be set up and substantiated when there was no person interested in disputing them. I do not think that any real mischief can be done by our Act; the only point that I contemplate is a mere technical point. A man dies, and his will is not found; the heir gets into possession; the estate is sold for incumbrances by the heir, and after that a will is found. To remedy that, you must pass a law that a will shall be void unless it is put into a proper place so that it may be found.

1466. Mr. *Whiteside.*] Is not it a dreadful case if a man makes a will which is not found, and after the estate is sold, the will is discovered, and it is found that it is sold contrary to the intent of the owner; did you say that there should be no means of remedying such an injustice as that?—I say that I think such an injustice must be permitted to stand if you give a Parliamentary title; if you substitute an estate for a million of years, instead of an estate in freehold, it may be done at the present moment.

1467. Sir *E. Perry.*] Does not it happen in England, where we have no Incumbered Estates Court, that a man may have made a will 100 years ago, and the heir has entered into possession, and sold the estate?—The Statute of Limitations gives a title.

1468. Therefore, that will, in point of fact, would be inoperative; and if it were discovered now it would be of no value?—Just so; independently of the question of time, if a man have an estate of 5,000 years, which is as good as an estate in fee, if the executor takes probate of an old will, and a new will is discovered before the sale, if a perfect title is made to the estate by the bad will, that is irretrievable, you can only come against the man who sold, and not against him if he has distributed the money. It is, in fact, assimilating freehold property to chattel property. If the Bill brought in by Mr. Solicitor-General for England was made law, by means of the operation of that, in addition to our Registry Act, I believe that no estate with a bad title would ever be sold.

1469. *Chairman.*] With reference to the past, do you repeat your confident opinion to this Committee, that justice has rarely miscarried in the Incumbered Estates Court?—I believe very rarely indeed; if there were any instances, I am sure that they most probably would have come to my knowledge. There are always parties ready to take up any case against the Incumbered Estates Court, and

and I suppose the people who were injured would go to them, but I never heard that they did so.

1470. Are you aware of how far the state of public opinion in Ireland is adverse to the jurisdiction of your Court, or otherwise?—I think, except with a few persons whose judgment is entitled to weight, public opinion is favourable, and too much so; there is too much confidence placed in us; people will not look after their rights, they trust too completely to us, and they will not take the trouble to ascertain what is due to them, or anything else; they are so confident that we will regard their interests.

1471. In the early part of your evidence, you stated that parties had injured themselves by their own computation of income tax, and that you had corrected the error to their advantage?—That is almost an every day's matter, they are so negligent. I think that our Court is inferior to the Court of Chancery, where a fair stand-up fight occurs between two parties; I think that the Court of Chancery is better calculated to decide such a question.

1472. Your Bar is too restricted, and the locality where you sit in judgment is bad?—The Bar is too restricted. The gentlemen who have most of the business are (and it is a very painful circumstance to us) three relations of the Commissioners, my brother, and the son-in-law, and son of Mr. Baron Richards. I think that that is an evil, and it cannot be rectified as long as you have the court sitting away from the Four Courts.

1473. Sir *E. Perry.*] Your brother points out that very objection in his evidence before the Commissioners?—Yes; it flows from this: at first, when the practice of a court is not known, when a solicitor does not know whom to employ, he is told, "Employ such a one, and he can ask the Commissioners." That brings him about the Court, and being about the Court he learns the practice and is easily found; the different causes react upon each other, and produce a very painful state of things to the Judges, and one which they cannot prevent by any impartiality on their part.

1474. Viscount *Monck.*] The Commissioners have pressed for a change of site, have they not?—Yes.

1475. Mr. *Grogan.*] Do you think that the evil which you have referred to would be effectually cured by a transfer of the Incumbered Estates Court to the Four Courts?—Completely; I think it would disappear at once. The Judges would take the greatest pains to let the Bar see that there was no advantage in employing one counsel more than another, except what depended upon their skill. I am sure that the Bar are kindly treated and listened to when they come. The office ought not to be kept away from the Four Courts.

1476. Mr. *Whiteside.*] In reference to the answer which you gave with respect to titles of estates and their being investigated by the examiner, I understood you to say that there was a counsel selected likewise to examine each abstract?—The solicitor gets leave to have counsel's opinion taken upon the abstract.

1477. Is that usually done?—Very often.

1478. Who is the gentleman that investigates the titles for Baron Richards?—I have not any knowledge of that.

1479. Is not it his son?—I suppose it sometimes is; I do not wish to be understood as saying that.

1480. Do you know, in the case in which it is in the power of the Judge to select the counsel that advises on the titles which he himself acts upon, whether, in the case of Baron Richards, it is not his son who advises upon the titles?—I really would as soon say that it was as not, if I knew it; I have not such a knowledge of the subject as would entitle me to say anything to the prejudice of an absent person.

1481. As a matter of fact, do you know?—As a matter of fact, I do not know; I never see the titles that go into Baron Richards's office.

1482. As a gentleman, practising in the Court, I want to know whether it is the fact, as I have been informed by a number of solicitors practising in your Court, that the titles are laid before that gentleman?—I am really again obliged to say I do not know; I have no means of knowing; I never see the title or the opinion, or anything connected with it.

1483. Viscount *Monck.*] The Commissioner does not select the person to whom the title is referred; it is the solicitor having the carriage of the cause who asks leave of the Commissioner to consult a counsel, is it not?—Yes.

1484. Mr. *Whiteside.*] I want to ascertain, as a matter of fact, whether the great

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great bulk of the titles that come before Baron Richards, are not advised upon by his son?—I assure I do not know; I have no means of knowing.

1485. Will you say that they are not?—I will say that I know nothing about it. I will write to find out, if you please; I do not wish to evade any question that you are asking me upon a matter that I know; anything relating to my own office or the court at large, I will give you information of, but what relates to private business in another man's chambers, I cannot speak to.

1486. You have mentioned that the position of the Court is a grievance, and unluckily it has happened that the practice is confined to a select Bar. I wish to ascertain whether with regard to the business of the Court it is in the power of Judge to select counsel to advise upon the title, and whether practically the great bulk of that, in a particular department, is not done by one gentleman?—With respect to the business in my own office, I think the Bar outside get as full a proportion as the relations of the Commissioners do. I know that the practice is a very bad practice, but I think that a solicitor too often employs some member of his own family. I pay very little attention to the opinion of counsel; I never read their opinion till I have formed my own first.

1487. As opinions are taken upon the value of the title to an estate, and of course are paid for, I want to know as a matter of fact, whether with respect to the great bulk of the titles not in your own office, it does not happen that they are advised upon by the gentleman whom I have named?—I have no information upon the subject.

1488. Mr. *Henley.*] Is the Judge, in this chamber practice which has been alluded to, the person who exercises a discretion as to the counsel that is to be employed?—No, he exercises no judgment upon that point at all.

1489. Is it open to the solicitor to employ whom he pleases?—Yes; we have often discussed the propriety of having a roster. I think that the business would be better done, but we do not like making new rules when we are almost on the verge of abolition. I think that we could select better counsel than the solicitors, because they have no interest whatever except in getting the title passed; I am afraid that there is not the same care taken that would be taken in the Court of Chancery. You must recollect that if a counsel certifies in favour of a title, even if it is a wrong certificate, the person who gets the certificate cannot suffer by it; but if it mislead us, it would make us defraud some one who was not a party to the suit.

1490. Mr. *Whiteside.*] If a solicitor thought that he had a better chance of getting a title to pass by having it advised upon by a particular counsel, he, quite irrespective of a positive law, would send to that counsel who was likely to approve the title?—Yes, there is that injury; I think it would be better if the solicitors were not allowed to appoint their counsel.

1491. You have stated that the 50th part of a penny would meet the cases in which there has been any possible injustice; does Mr. Rolleston practise largely in your court?—He does.

1492. In his evidence, which is contained in the Appendix to the Report of the Commissioners, at page 52, he says this: "Another matter which requires remedy, in my opinion, is the mode of giving notice to tenants. I know many cases of hardship have arisen from parties having actually lost valuable interests in land by not being served with notice, or being otherwise informed of the proceeding to sell, as bearing on their interests; and I have had many cases before me exemplifying this: for instance, middlemen holding valuable interests under the Crown by leases, and their tenants being the occupiers, the latter are the persons served with the notice and returned on the rental, and after the sale the middle interest is gone, as the occupier has too often a direct interest in not letting his immediate landlord know anything of the notice?"—I am inclined to think that such cases must be exceedingly rare; they have not come before me; they would come before me in the nature of claims for compensation, because the middleman would find that his interest was evicted before the funds were distributed, and he would come and ask for very ample value by way of compensation for the loss that he had sustained. We have not had those cases.

1493. Mr. Rolleston observes that he had had many cases before him exemplifying that fact, of valuable interests being lost?—The cases do not come before me. It would be more satisfactory if he would mention them, and then they might be explained. If they came before us we would give compensation.

1494-5. Mr. *Fitzgerald.*] Was not it the case, in the early period of the Court's

Court's operation, that the middle interests were of comparatively little value' and sometimes of less value than the headrent reserved?—Yes, very often the case; men purposely shrank from bringing their interests forward, trying to play fast and loose, wishing the land to be sold discharged of the lease, that then they could come and claim compensation.

1496. Mr. *Whiteside.*] Were you one of the Commissioners who took this evidence?—That evidence was not parole; it was written evidence.

1497. Was not that evidence in answer to your questions?—Yes.

1498. You sent the questions to the gentlemen whom you thought most competent to advise you, and of course to a man so eminent as Mr. Rolleston?—Yes.

1499. Did he write that evidence?—Yes.

1500. Did it occur to you as proper to call for any explanation of evidence of that nature?—No.

1501. Or to make any inquiry?—I did not think it necessary to make any inquiry, as he did not mention any facts.

1502. Another gentleman has given a piece of evidence, that he has known an instance of a person who owed no money bringing an estate within the authority of the Court; is there any other witness, or any other piece of evidence in the book to that effect, save the answer of Mr. Smith?—I do not remember that there is. I know a fact, which Mr. Smith might not know, or the other witnesses. I must say, I have thought it appeared a very oppressive case, petitioning to sell for so small a debt, and I have said, "I see no interest due," and the man will say, "The fact is, the proprietor wishes to have it sold, and he has borrowed money and made the incumbrance to have it sold."

1503. Is that a case in which the Court ought to act if you discover that there is not a *bonâ fide* incumbrance, but a contrivance to bring the case within the jurisdiction of the Court?—The debt is *bonâ fide* due, although it has been borrowed with that view. I do not think that we can distinguish the one from the other.

1504. Supposing it was discovered to be a contrivance, you would act upon it and sell?—Yes.

1505. If it was not a real incumbrance?—If it was a real incumbrance I would sell although it had its origin in a desire to have the estate sold.

1506. Supposing you had a judgment, and it was described that the judgment was not for a real debt?—It is always for a real debt.

1507. I do not find in the Report any evidence to show that it has occurred, either from the lips of any of the Commissioners, or from the lips of any witness but that one gentleman?—He says he believes it. I know it; it accords with my own experience.

1508. What is the exact staff of your Court at present; how many officers have you?—About 30, I believe.

1509. Can you give the date of the last appointment of any new officer or office in the Incumbered Estates Court?—I cannot give the dates in the last year. There have been two officers appointed to supply the places of retired officers.

1510. Had there been any new appointments made within a short time of this Report?—No, I think not.

1511. Nor since?—There have been two new offices.

1512. Has there been any increase in the salaries?—Yes, a small increase in some salaries.

1513. Are the gentlemen in your Court fully occupied?—Yes.

1514. Is it not the case that Mr. Hargreave and yourself have been from the beginning overworked?—Indeed I should not willingly undertake so much work again.

1515. Mr. Hargreave and yourself dispose of a large quantity of business; Baron Richards being a judge of another Court, it is impossible that he could do so?—Yes.

1516. Do you think it a wise thing that a Baron of the Court of Exchequer, who has work to do elsewhere, and who never goes circuit in consequence of being a Commissioner of your Court, should continue to be nominally a Commissioner when he cannot discharge his fair proportion of work?—I think at first it was a very good appointment; it was very desirable that, in the new Court, there should be a person accustomed to judicial duties. I doubt if it was

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possible to find a person better fitted for that purpose than Baron Richards. I think when the Extension Act passed, there should have been three men giving their whole attention to the work. I think it was a good appointment to set the Court in motion; the mode in which the Court has been dealt with subsequently has been quite purposeless; the time has been extended during which petitions should be received.

1517. You think no other Extension Act ought to be passed?—The same infirmity of purpose would keep it on for ever.

1518. If Baron Richards was restored to the Court of Exchequer, his salary would be restored also?—Yes; but we should lose his services.

1519. What period of time would it take you and Mr. Hargreave, who are fully competent to perform the business of the Court, to transact the quantity of business; I will not call it arrears, but business undone in the Incumbered Estates Court?—I think, in about two years we would have it all done, except, in some cases, it would stand over from various causes.

1520. You are asked this question, "Can you estimate the time within which the business of the Court can be completed, supposing the period now limited for receiving petitions is not extended?" Your answer is, "Assuming that there will be no extraordinary influx of petitions between the present time and the last day for receiving petitions, we think that the period prescribed by the Act of Parliament, (viz., two years and the duration of the then ensuing session of Parliament), will be sufficient for the completion of the business of the Court, so far as its completion rests with the Court;" am I right in understanding that answer to mean, that in two years and the duration of the then ensuing session of Parliament, you and the other members of the Court would be able to pronounce your orders and dispose of the business?—No; doing all the business that was not delayed by something not depending upon our power; for instance, it may happen that a very complicated case may suddenly arise, and it may be so complicated as to require three years to determine. It may also happen that a claim may be set up for a lease by a tenant just when the abstract of title is read, and everything else done; and it may take a year or a year-and-a-half to decide the claim, because it may depend upon a complicated equity suit. The great mass of business would be swept away in a very much shorter time.

1521. What you mean to say in your evidence is, that the judicial business of the Court would be done, the orders for sales, and so forth?—The orders for sales would be made in a month. The great mass of business would be swept away, and disposed of.

1522. Your answer goes on, "But there will probably then remain considerable funds to be disposed of under the 35th section of the Act; and there may be some cases not concluded, owing to the amount of litigation involved in them." You may have a good deal of money to distribute?—Yes.

1523. Mr. Hargreave and yourself being competent in the way I have described, could you finally distribute the money, and wind up the entire business of the Court in five years?—I think for the last three years of the five we would have little to do. It might happen that some cases would not be ready for us, but I think in a year or a year-and-a-half the great mass of the business would be done. In the last part of the time it would be done slowly, and at great intervals. We might have to attend once a month or so at the end of the five years.

1524. According to your Return, 10,000,000 *l.* of property remains to be sold?—Yes.

1525. And how much to be distributed?—£. 4,000,000 out of 18,000,000 *l.*

1526. You think that you could wind up the whole of that business, with the exceptions which you have named, in a couple of years?—The great mass of the business might be done. There might be at any time a Bill to rectify a settlement, or to set aside a deed for fraud, which would cause delay.

1527. I will add six months on that account?—We cannot tell when such a case will arise. In Whaley's estate there was a long-litigated question to determine a lease for lives.

1528. With the exception of those particular cases, you think that you would get rid of the great bulk of the business in two years?—Yes.

1529. Did you, in collecting the evidence which is contained in the Report, examine any officers of the Court of Chancery as to the condition in which the Court of Chancery is at this moment?—I do not think we did.

1530. Therefore

1530. Therefore, whether the Court of Chancery is in a condition to receive that influx of business, as far as your examination went, you have given no evidence in your Report?—No. I believe it is very well known that the Court of Chancery has a very abundant staff of officers for what it has to do.

1531. You state that the business done in the Court of Chancery, under what you call the 15th section of Sir John Romilly's Act, has brought a great quantity of business into the Masters' Offices in the Court of Chancery?—I do not know that it has brought any more business; it has enabled the Masters to do it.

1532. Do not you know that every reform which has taken place in the practice and procedure of the court has increased the business of the court?—I think in a bad state of the law people will submit to injustice rather than go to law.

1533. That Act was in force before the excellent reforms were carried out in England, was not it?—Yes.

1534. Therefore the Masters in Ireland are at this moment Vice-Chancellors, and do the whole of the work?—Yes.

1535. In those cases in which the Masters can carry out the whole business, do not they perform it much better than by fumbling over reports, reporting to the Lord Chancellor, and so on?—Yes.

1536. You contemplate, as I understand you, that the four Masters doing that work under the 15th section, should be continued?—If necessary.

1537. That means, does not it, that they may be continued if the Lord Chancellor says that they ought?—Yes, if it is found necessary to do so.

1538. When you say that two Vice-Chancellors are to be appointed, do you mean that they are to do the business with regard to the sale and transfer of estates, or to take a part in the general business of the Court of Chancery?—Both. There is an immensity of business that they might do.

1539. The practice in the Court of Chancery, in ordinary cases of equity business, is not identical with the practice of the Incumbered Estates Court, is it?—No.

1540. Therefore the officers of the Court of Chancery, in regard to the practice in their own court, are and must necessarily be better acquainted with that practice than the officers of your court?—Yes.

1541. And your officers are better acquainted with the practice of your court?—Yes, I think that is very reasonable.

1542. Have you not made any inquiry as to whether there are any offices or places prepared for the quantity of work now transacted in the Incumbered Estates Court, and which you propose to transfer to the Court of Chancery?—We have, and we know that there are not offices procured. There are officers enough, but there are not offices in which to carry on the business.

1543. The Right Honourable Chairman asked you a question about the enlargement of the jurisdiction of the Court of Chancery to the cases of unincumbered proprietors, and you, I think, were of opinion that there would not be a large increase of business arising from that, because ordinary sellers would not resort to your court in consequence of the expense?—I think where the estate was small they probably would not do it. I ought also to have said, that there is not at all a strong disposition in Ireland on the part of unincumbered persons to sell their estates. We knew that before, and those gentlemen who are practising at the bar know very well how very rare a thing it is to have an estate sold, except through the instrumentality of the court. As long as a man is not embarrassed he would rather keep his estates, generally speaking.

1544. Am I to understand you to say that the sellers would not come to your court in consequence of the expense to which they are put in regard to the system of advertisements?—I think if the title was clear, and the estate small, they would not come to our court.

1545. Is not it a fallacy to suppose that your system is a cheap system?—The system is as cheap as it can be, consistently with giving a Parliamentary title.

1546. But the system of giving a Parliamentary title is costly?—It is.

1547. You are naturally obliged to advertise largely, in order that you may try to find out everybody who has an interest in the property which you are about to sell?—The schedule of incumbrances we advertise; and of course in a private sale that would not be done.

1548. If you are of opinion that very few unincumbered proprietors would resort to the court, is there not the less necessity for the Committee to deal with this

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part of the Bill?—I do not think it is a matter of necessity; I regard it as a matter of policy.

1549. Would it not be a branch of the jurisdiction, if it were created by Parliament, that would impose additional responsibility upon the Judge, and must he not of necessity be more careful and anxious, as there are no hostile litigants before him to correct any error into which he may fall?—Undoubtedly, there is a greater possibility of mistakes than in times past, for an obvious reason.

1550. *Chairman.*] Will you explain that?—When a new court is established the public tries to discover the weak points of the system. We, as well as we can, guard against every opportunity for fraud, but some of the public (I do not mean the great mass of the community) will be always seeking for the means of perpetrating frauds; and, accordingly, as the new system is better known, they will be more likely to find some little leak which we have not perceived ourselves.

1551. Mr. *Whiteside.*] With regard to the Court of Appeal, did you, in the course of your inquiries, examine the eminent practising barristers of the Court of Chancery, in order to ascertain whether, in their opinion, a Court of Appeal should or should not exist in Dublin from the judgments of the Court of Chancery itself?—No, we did not.

1552. Therefore there is no evidence in your report before the Committee upon that important matter?—No.

1553. Would not the principal practitioners of the court be the best witnesses upon that subject?—Yes, so far as it is a subject for witnesses at all. Perhaps I may be allowed to say that it occurred to us all, that having a Judge of Appeal in Ireland from the Lord Chancellor was rather an inconsistent thing; that was the ground that affected us.

1554. Take for example a case which has been decided in the Court of Chancery of the value of 1,000 *l.*, in which the counsel are of opinion that the judgment is wrong. It is a defect of our judicature that the counsel would advise their clients to submit to injustice rather than incur the expense of an appeal to the House of Lords. What objection is there to allowing that question to be heard before the Court of Appeal in Ireland, supposing the other Judges of it were of equal eminence and authority in the law with the Lord Chancellor, for instance, the ex-Chancellors?—The objection is chiefly on the score of the position of the Lord Chancellor. I would rather remove all technical objections to an appeal to the House of Lords. I know now a case which I can mention which shows how decisions appear to be reversed which ought not to be. In the case of Maloney *v.* Richards the Lord Chancellor of the day made a decision which I think was not a good one. Baron Richards happened to be the plaintiff in the suit, and he did not think it worth while to go to the House of Lords. Exactly the same point arose in my office, and I was obliged to follow the case of Maloney *v.* Richards, although I disapproved of it. There was an appeal to the full court, and the full court disapproving of the decision in Maloney *v.* Richards (Baron Richards having been the defeated party in it) confirmed my judgment, because we would not go against that decision. There was an appeal to the Privy Council, and the Privy Council reversed the decision. Our judgment appears to be reversed, although our judgment was a right one; and the original decision, which was wrong, stands unreversed.

1555. Does not that show the benefit of an appeal?—Yes, of a good and cheap appeal.

1556. Except in point of etiquette, is there any objection to having a good Court of Appeal upon the spot?—I cannot see any necessity that an appeal to the House of Lords should be so expensive as it is.

1557. I collect from your evidence that you are of opinion that the happy time may come when even the two Vice-Chancellors proposed to be created by the Bill will be found to be too many for the business, and that all the work could be done by one?—If certain reforms in the law that are proposed take place, I do not think it at all impossible, nor very improbable.

1558. We must take the law as we have it now?—Until you reform the law you cannot reduce the number of Judges.

1559. I understood you to say that now two Vice-Chancellors would be fully sufficient, and perhaps it would be necessary hereafter to reduce the two to one?—I am

—I am taking the supposition that Sir John Romilly's Registration Bill shall be brought into effect in Ireland, and also the Solicitor-general for England's Testamentary and Probate Bill. *M. Longfield*, Esq., LL. D. 17 April 1856.

1560. As soon as those possible projected reforms shall be carried out, you think that the reduction could take place, but not till then?—Yes.

Lunæ, 21° *die Aprilis*, 1856.

MEMBERS PRESENT.

Sir James Graham.	Mr. De Vere.
Mr. Kirk.	Mr. Whiteside.
Mr. Grogan.	Sir Erskine Perry.
Mr. Fitzgerald.	Viscount Monck.
Mr. Macartney.	Mr. Walpole.
Mr. Henley.	Mr. Ellice.

THE RIGHT HON. SIR JAMES GRAHAM, BART., IN THE CHAIR.

Mountifort Longfield, Esq., LL. D., called in; and further Examined.

1561. *Chairman.*] THERE is one question which I omitted to ask you upon your former examination with reference to a branch of the Attorney-general's Bill, with respect to fees and stamps, as affecting the cost of sale in your court contrasted with the present cost of sale in the Court of Chancery; will you just explain to the Committee what is the indulgence in favour of sales in your court with reference to fees and stamps?—With reference to stamps there is no indulgence whatever; the conveyance is subject to the same stamp as if it were a sale out of court. There are, of course, no fees by the Act of Parliament in any case. With regard to the copies of documents, they are very expensive in the Court of Chancery, and that often keeps parties having small rights, but which are important rights to themselves, in ignorance of the proceedings; they are prevented from taking out copies, or almost of making inquiries. With us it costs nothing; you would get an order with us for 6 *d.* Perhaps the Committee will allow me to state with regard Lord Blayney's case, that Mr. Murphy told me this morning that he had been informed that the Master of the Rolls, after the report had been made in that case, refused to confirm the sale. This does not appear on any document that I have seen. *M. Longfield*, Esq., LL. D. 21 April 1856.

1562. To return to the matter of fees and stamps as constituting the expense of a sale in your court, contrasted with the cost of a sale in the Court of Chancery of the same property, what would be the difference in the expense of fees or stamps?—I cannot compare them by proportion, because we have no fees; and then it will depend upon the length of time during which the suit has been pending. With regard to the purchaser himself, the chief expense in the Court of Chancery is the expense of getting a deed executed by a number of parties, and the expense of having a long deed instead of a short one, and of having it very carefully prepared.

1563. The form is very much in favour, at present, of a sale in your court, as contrasted with a sale in the Court of Chancery, of the same property?—Very much. Among other things, our habit of not adjourning sales, unless in a case where it was a demonstration that it would be gross injustice to sell, has given purchasers great confidence that on the appointed day the sale will take place; and our practice also, of not opening the sales, has had a similar effect on purchasers; and also the indulgence which we give to purchasers of not lodging their money on the spot, when there is no danger that the money will not be ultimately brought in.

1564. Clauses from 184 to 197 are framed for the purpose of transferring your rules and practice with respect to those charges to the Court of Chancery bodily?—Yes.

1565. Have you looked at those clauses?—Yes.

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1566. Would they effect the purpose?—They would effect the purpose very well, and would reduce the fees so as not to have them an impediment to justice. It is a fair thing to charge something.

1567. The variance which now exists with regard to the costs of sale, arising from the circumstances which you have stated, would, if those clauses were passed, no longer exist in the Court of Chancery?—They would no longer exist to any extent.

1568. Will you explain what are the powers that you would recommend to be exercised by the Masters in Chancery, under the 15th clause of Sir John Romilly's Act. What are the judicial functions to which they would be limited?—I would give them all the power that they have at present, viz. of taking all the accounts, directing the sale, and finding out the incumbrancers.

1569-70. But you would put an end to references to them to report?—Yes. I would rather that they had it originally. I may say that were it not for the expense, I would rather have three Vice-Chancellors under the Bill of the honourable Member for Enniskillen. I think that would be an improvement on giving them jurisdiction under the 15th section.

1571. You would retain four Masters, who would be really Vice-Chancellors, and then you would add one or two others; would you retain the four Masters, with all the power of Vice-Chancellors, and add two more?—I would retain them for the present, if they were wanted. It might not be necessary to add two more, because the Crown might appoint those Vice-Chancellors if it thought proper.

1572. You would confer on the Crown the power of appointing two Vice-Chancellors, and would recommend that the four Masters should also be converted into Vice-Chancellors; that is to say, you would have six Vice-Chancellors?—No; I would continue their jurisdiction if it was found necessary; but in case the proceedings were found so numerous, and the litigation so much as is anticipated, I would have the power of calling in their help till something else could be done.

1573. If your court were abolished, and the powers transferred to the Court of Chancery, you would distribute amongst those four Masters, and two new Vice-Chancellors, the functions now performed by the three Judges of the Incumbered Estates Court?—No, I would give to the Vice-Chancellors entirely the duty which the Judges of the Incumbered Estates Court perform now, together with all the Chancery business, unless it were found necessary to throw some of it on the Masters.

1574. You would not distribute any of the duties performed by the Incumbered Estates Court among the four Masters?—They could not do it without additional assistance.

1575. You have referred to the Bills of the honourable Member for Enniskillen, which, together with the Bill of the Attorney-general, are referred to this Committee; have you instituted a comparison between those Bills and the Bill of the Attorney-general?—Yes, I have.

1576. To which do you give the preference?—On the whole, I prefer the Attorney-general's Bill.

1577. Will you point out, shortly, to the Committee the reasons of that preference?—In many respects they agree. I think that the main difference is just a squabble for patronage. One says, "You must not have a change in the law made unless we have the power of naming the persons in the Act of Parliament." I think it more constitutional, on the whole, not to name them in the Act of Parliament, but to throw on the Crown the responsibility of naming the persons. In the next place, I think that the honourable Member for Enniskillen overloads his Bill with rules which ought not to be enacted by Parliament. It is a great inconvenience to the public to have mere rules of practice made by Act of Parliament. The Judge has not the power of altering them. No man can, until the rules are brought into actual practice, know how they will work; and then, if any slight alteration is to be made in any rule, all that the Judge can do is to say, "I have no power; and if injustice is done, I am not responsible." It is mistaking the nature of a rule. A rule should be just a course of procedure adopted by the Judge, and published by him beforehand; and he should be responsible for this, that the rule is sufficient, on the one side, to secure order, and, on the other side, not to obstruct the public in their path to justice. But I think it is very important

important that the court, which must know more than a Select Committee, or anybody that you can name beforehand, should have the power from time to time of making all its rules, except, perhaps, an Act of Parliament might be passed to abolish a bad practice springing up again, such as a reference to the Masters. Something that has been condemned as bad you might just stop by an Act of Parliament, but I would never make any rule with respect to the course of procedure; and, without saying that the rules are bad, I think it is a bad thing to make them at all.

1578. Have you any other grounds of preference for the Attorney-general's Bill, as compared with the Bills of the honourable Member for Enniskillen?—With respect to his Procedure Bill, with the exceptions I have mentioned, I am very well satisfied with it; it goes too much into detail, and names the officers. There are a few little technical observations, which are really rather criticisms, more than anything else, on words.

1579. The honourable Member for Enniskillen attaches the sale of estates in a manner somewhat different from the provisions in the Attorney-general's Bill, or the practice in your court?—It is not very material; a few alterations require to be made; subject to those alterations, I think the two Bills would be the same.

1580. Do you approve of the alteration suggested by the Bills of the honourable Member for Enniskillen?—No.

1581. To which of them do you object?—I will mention, for instance, in page 6, line 9, in the Sales Bill, it speaks of selling a lease along with an estate, and it says, "This may be sold, although not subject to an incumbrance, or would not, if incumbered, be subject to the jurisdiction of the court." The last clause is borrowed from our Incumbered Estates Act; but it is quite useless there, because there is no kind of lease that could not be subject to be sold by the Court of Chancery. I think that ought to be left out.

1582. Mr. *Whiteside.*] If engrafted on the Court of Chancery it might be left out, because the Court of Chancery have the power?—Yes, this Act gives them the power of selling every lease.

1583. *Chairman.*] Without troubling you with the details, is there not this large feature of difference between the two proposals, that the Attorney-general's Bill provides for the sale of unincumbered property, while the Bill of the honourable Member for Enniskillen does not do so?—Yes; I think on the whole it is desirable that all kinds of property should be subject to the same mode of sale. Certainly gentlemen in Ireland complain that it is a hard thing on them if they are to sell an unincumbered estate, that they shall not have the same advantages which a man has who has rather mismanaged his estate by incumbering it.

1584. I understood you to say that you did not attach importance to the power of selling unincumbered property, because you did not think that the inducement of an indefeasible title would lead a man to sell unincumbered property who otherwise did not desire to do so?—No; men do not wish to sell their estates generally, if they are not incumbered. I am often incidentally consulted. A man says in court, "I think I will sell all my estate and buy it in myself, for the purpose of getting a Parliamentary title to it." I always say, "It is folly to do so, for a title under our court is getting worse every day, and the title that you have already is getting better every day.

1585. Why is one title getting worse, and the other getting better every day?—One is getting better by reason of the Statute of Limitations, and the other is getting worse by the changes which take place.

1586. Mr. *Whiteside.*] There was a case which I saw referred to publicly in London; namely, Snagg's case. You mentioned that it was seldom that many mistakes were made in your court. Was the statement correct, that there was a sum of 11,000 *l.* or 12,000 *l.* paid in wrongly?—The wrongful payment was about 1,100 *l.*; in that case the owner had the carriage of the proceedings. There was a surplus estate; he brought in the schedule of incumbrance, and what is called the allocation schedule his own solicitor brought in. A fiat was made in his presence to a person by the description given in his own allocation schedule, and it appeared that it was to the personal representative of Ann Garston. A person came in, showed the probate of the will of Ann Garston, showed that the owner's father was an executor under that will, and had renounced probate, and made an affidavit that the sum was due to her and she

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got the money in the office; but everything was done in the presence of the person who got the money.

1587. And the money was lost to the right owner?—Yes; it was not a mistake of our Court, but it was a mistake of the person who paid the debt, and said, Pay it to the representative of Anne Garston.

1588. In reference to the subject that the Right honourable Baronet has asked you about, namely, fees and stamps in the Court of Chancery, did you ascertain, as a Commissioner inquiring into this subject, the amount of fees and stamps now paid in the Court of Chancery by suitors in that court?—My impression is, that we got that information from the solicitors; we did not get the details of the stamp duty.

1589. Did you get a return or a document, vouched by the proper officer of the court, showing how many thousands a year are received at the Treasury from the stamps of suitors, by the different regulation stamps in the Court of Chancery?—No.

1590. Your proposal therefore is, that whatever number of thousands it may be, the fees and stamps that produce that revenue are to be abolished?—Or reduced so materially as not to interfere with the knowledge which the suitor ought to possess of what is going on.

1591. The substance of the recommendation is, that those stamps be either reduced or abolished?—Yes.

1592. Upon what ground can you recommend the abolition of the stamps in one court of law and leave them existing in the other courts?—The other courts of law in Ireland did not come within our Commission.

1593. I am not asking you about what came within your Commission, but I wish to know on what principle you recommend the fees and stamps in the Court of Chancery to be abolished, and the expense to be thrown on the public funds, and yet allow the fees and stamps to remain in the County Court of Ireland, the Court of Common Pleas, the Court of Queen's Bench, and the Court of Exchequer?—If I had the honour of being appointed a commissioner to inquire into those courts, I could make the same report. If a man has now to go through the injustice of paying in two courts, he is better off instead of worse for having to pay only in one court.

1594. Is it your principle that fees and stamps in all courts of justice ought to be abolished?—I think they are all too high; but that they do more mischief in the Court of Chancery than in any other court, from the nature of the suits and the manner in which the suits are conducted.

1595. If the fees and stamps in the Court of Chancery in Ireland were abolished, how could you justify maintaining them in the Court of Chancery in England?—I have no wish to do so.

1596. Have you any notion of the sum that it would cast upon the Treasury of the country to make good the amount of those fees for England, Ireland, and Scotland?—I have not; nor do I know that it is very material; for it is merely a question whether the public shall be taxed in one form or another, and it is generally believed that in the case of a suitor who has to appeal to the public for justice, to tax him too highly is bad policy and not very just.

1597. If your recommendation was carried out by this Committee, the consequence would be that the Court of Chancery in Ireland would pay little or no stamps or fees, while the Court of Chancery in England, and all the other courts in the empire, would pay them?—I think so much the better for Ireland. We have made that reference specially with regard to giving a Parliamentary title, and we thought that fees, which obstruct men in their searches and knowledge of what is going on, are absolutely ruinous to justice when a Parliamentary title is given.

1598. Do you hold the doctrine that a private individual should sell his estate at the expense of the country?—I think it is a fair thing to put a tax upon the price that he gets for his estate. There is a great difference in taxing the sum total, which you cannot avoid in any way, and putting a tax on a man who may avoid the charge by not doing many things that ought to be done.

1599. Would you take a tax in substitution of the stamps and fees. Would you make a per-centage deduction from the produce of the sale?—That, I think, would be the fairest way.

1600. How would that apply to the Court of Chancery, in the quantity of business which is there done which does not end in a sale; would you make

persons

persons whose estates were sold pay for the litigation of other parties who had no estates to sell, but who had equitable rights to determine?—No; I would put on the sale of estates as much costs as would pay the proportion of the expenses that I thought it reasonable to suppose they caused. I suppose 3*d.* in the pound would do it.

1601. What would you do with cases in which the court does not direct a sale, but where equitable and important rights are adjudicated upon between the parties?—They should pay very little; I would reduce their fees very materially.

1602. But you would make a man who had an estate to sell pay a per-centage?—Yes, I am now paid at the public expense for doing conveyancers' business.

1603. What is the exact sum that the Incumbered Estates Court costs the country at present?—About 14,000 *l.* or 15,000 *l.* a year. I have read the Blue Book since I was last examined, and I find that some of the increases were made since the date of the answers that we got in the Blue Book.

1604. Do you require that a document, before you give it out, shall be stamped, or is it not optional with the party to get a stamp put upon it?—No, I do not take the Stamp Act and read it, but the secretary has instructions never to sign a deed till it is stamped.

1605. But all copies, and so forth, are given at the expense of the State?—Yes, but we consider that the Act of Parliament binds us, wherever we know that a document is not stamped, to have it stamped before it is parted with from our custody.

1606. You were asked whether you objected to the Bill; I think your observation with regard to naming the Judges referred to my Bill?—Yes.

1607. That refers, I presume, to the clause which proposes that those who are Vice-Chancellors already, in reality, by business, under the 15th section, should become so in name?—No, I rather referred to the Court of Appeal; I referred to both, but particularly with respect to the Court of Appeal.

1608. Did you read the English Bills?—Yes.

1609. Are you aware that they dealt first in one separate Bill with the abolition of the Masters' offices, and then dealt with the procedure of the court?—Yes.

1610. Do you perceive that I have accurately followed that plan?—I have not compared them so accurately as that.

1611. The ground of observation was, that I proposed to raise the Masters doing a certain amount of business into the rank of Vice-Chancellors?—Yes, that is so.

1612. Is that the entire objection?—No; I think it is still more objectionable by raising the Masters' examiners into chief clerks.

1613. The object of that was to deal with the officers as we found them, and prevent the necessity of appointing new clerks to discharge the duties of the existing staff?—It does not at all do that. A man who happens to be the son of a Master, and appointed to a place almost a sinecure, shall be called to do the duties of a chief clerk. You find a man in the public service, and say, "I will employ this man in a service that he may not be fit for." I think that a Master must be fit to be a Vice-Chancellor, but an examiner is not necessarily fit to be a chief clerk; it is a mere accident if he is so.

1614. He might be, or he might not be?—He might be, or he might not be.

1615. You would give power to pension off the whole staff of the Court of Chancery, and appoint a new staff?—Yes.

1616. To whom would you give the power to do that?—The Government of the day.

1617. In my Bill I do not deal, as you observe, with the sale of estates, nor with unincumbered property?—No.

1618. Have you any objection to the constitution of the Court of Appeal proposed in my Bill; I took the late Lord Chancellor Blackburn because he was paid 4,000 *l.* a year by the State, and I proposed that that sum should go for the greater part of the salary of the Judge of the Court of Appeal; do you see any objection in principle to naming a gentleman who has been Chancellor to be a Judge in a court of appeal?—I do; it is a matter of which the House of Commons cannot judge, except by acclamation; and I have no doubt that the Government ought to appoint him.

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1619. Do you think that the late Lord Chancellor would be the right man in the right place?—Yes.

1620. Would not the whole Bar of Ireland approve of it?—Yes.

1621. And the suitors?—Yes.

1622. And it would save 4,000 *l.* a year to the State?—Yes; we must, however, pair off against that, that you have named an unfit man.

1623. Are you aware of a project for reforming the Ecclesiastical Court in Ireland, and dispensing with the Judge of the Prerogative Court?—That has been in view ever since Dr. Keating was appointed, 13 years ago.

1624. And Dr. Keating was an eminent man at the Bar?—Yes, he was an eminent man at the Bar.

1625. If that court be reformed, that gentleman would be entitled to his salary for the rest of his life, as it is a patent office?—Yes, I think he would get it for life.

1626. He is a strong man, bodily, is he not?—He shows no signs of infirmity.

1627. And he is a young man. If that Bill saved the amount of his salary, by proposing to make him a Judge of the Court of Appeal, except the constitutional objection, would you see any harm in saving that amount to the State?—No, I would not see any harm in saving that amount to the State, but I would see harm in this way: you appoint a man of whom the presumption is that he would not be fit; he was appointed to perform duties quite different from anything that he would have to perform in the Court of Chancery.

1628. Are you aware that he had great practice in the Court of Chancery?—His practice was principally in common law, but he has been 13 years forgetting it.

1629. But he is still in the prime of life, as a Judge in the Ecclesiastical Court?—Yes.

1630. You have stated that you objected to the second Bill, because you think it is too much overloaded with rules of practice?—Yes, that is the chief ground; the rules are, some of them good, and some of them bad; but, taking them altogether, it is a bad principle, and they would not work in consequence. I think you have put too high a rank to your two Judges of Appeal; they should come after the Lord Chief Justice. No Judge except the Lord Chancellor should be put above the Lord Chief Justice of the Queen's Bench.

1631. Are you aware that the practice of the Court of Chancery in Ireland at this moment is in a state of confusion, by the opinion of the principal practitioners at the Bar?—I am aware of that; but I think, on the whole, they know it better than they knew the old practice, on account of its being more simple.

1632. *Chairman.*] Do you mean that the practitioners understand it better?—Yes; and a slight error is not so fatal as it was under the old system.

1633. Mr. *Whiteside.*] Are you aware that the practitioners in the Court of Chancery condemn the present practice, as tending to confusion?—I do not think they do.

1634. Do they object to it?—I have always heard the changes approved of as great improvements, but not going far enough.

1635. Do you believe that the principal practitioners in the Court of Chancery would say that they approve of the present practice of the court?—I believe they would; they would not approve of it as the best possible practice, but they approve of it as an improvement on that which existed before.

1636. You have not been there for some time yourself?—No, not since the improvement took place.

1637. Do you approve of what is called the affidavit practice?—No, we reported against it. We reported, that when an affidavit was filed, the party objecting to it, that is, the party against whom it was filed, should always be permitted to cross-examine the person who files the affidavit, if he thinks proper.

1638. Did you see that in the Procedure Bill I reformed that vicious practice?—I believe you did.

1639. Did you ever read an excellent pamphlet containing a proposal by the Master of the Rolls for the Reform of the Court of Chancery in Ireland?—No.

1640. Do you happen to know that several of the rules that he made as the head of a practical court are in my Bill transcribed nearly *verbatim*?—No.

1641. Do

1641. Do you know that many of them are taken from the English procedure?—Some of them are.

1642. Do you know that the power given to the court to make and unmake rules at pleasure has led to confusion in the practice of the court?—I do not think it has.

1643. Did you not observe in the Bill that, while certain rules are laid down for the government of the court, the court has power, if necessity should arise, to alter or to vary those rules?—I do not understand that there is a power sufficient to enable them to alter or to vary any rule. I think that there ought to be that power.

1644. Have you read the Receivers' Bill?—I have.

1645. What is your opinion of that Bill?—That it is a great improvement upon the present system, but that might be improved too.

1646. What is the amount of rental at present under the Court of Chancery; is it 600,000*l.* or 700,000*l.* a year?—I dare say it is.

1647. Did you ever read the Report of the Receivers' Committee?—I think I looked over it.

1648. Does that Bill follow out, in a great measure, the recommendations of that Committee?—Some of them.

1649. Do you approve of the Bill?—I think that you give too much force to the court: I do not think it requires two Receivers Masters, two chief clerks, and two under clerks.

1650. Do you observe that I make a provision that, when the Master dies, his place shall not be filled up?—Yes.

1651. When you say that I propose to appoint two Receivers Masters, it is dealing with the existing staff, with the provision that when one of them dies, his place shall not be filled up?—Yes, that is the 11th section; it is not very well expressed, I think, but the principle is good.

1652. Is there anything more vicious in Ireland than the receivers' practice, or more detrimental to the country than the present system of appointing receivers?—I think it is very bad.

1653. Have you, in the Incumbered Estates Court, ever exercised the power of appointing receivers?—No; we have not that power.

1654. Therefore this mischief arises: that while you have to sell, in the interval of the three or four years that elapse the person goes into the Court of Chancery to get his receiver?—Yes.

1655. Therefore the estate is subjected, in consequence of the double jurisdiction, to the annoyance of having two suits instead of one?—Yes.

1656. A suit in your court to sell, and a suit in the Court of Chancery to get a receiver and the rents, must be worked in the meantime?—Yes; that is a great evil, I think.

1657. That, of course, by either of the plans before us, would be disposed of?—Yes; but I think the receivers would be better managed by the Vice-Chancellors and their clerks than by having a Receivers Master altogether distinct from them.

1658. You mentioned, the other day, that you had the entire arrear of the Court of Chancery to get rid of, in point of fact?—I said a very heavy arrear.

1659. In point of fact, did you not find, in the reports of the Masters of the Court of Chancery, a very accurate statement, both of the title and of the rights of the parties, to the produce of an estate when sold?—No; the reports of the Masters, upon the whole, gave us exceedingly little help.

1660. Did you pay money on the reports?—Yes, sometimes; but we should have found out the facts just as soon in most cases by ourselves.

1661. Did you act upon the reports in those cases where you sold estates which had been before in the Court of Chancery?—Yes, of course; we were obliged to do so by the Act of Parliament.

1662. Did you find them wrong?—Not often.

1663. Out of how many hundred cases in which they had investigated the matter before the cases came before you, did you find any inaccuracy?—A very small proportion.

1664. Therefore they did the work well?—They did the work well; but the misfortune is, that their doing that work did not expedite the parties to a sale.

1665. Did not you state that you thought that the power of sale, as the court

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is at present constituted, would not be effective; what objection do you see to giving the Masters or the Vice-Chancellor the same power of selling that the Incumbered Estates Court now has?—None whatever. I would add to it, and make him complete his work without going through the form of having the Master of the Rolls saying, "I do not disapprove of it."

1666. Are you not aware that at this moment, in cases that do not fall within the principle of the Incumbered Estates Court, the Masters sell even under the present form?—Yes.

1667. Did you mean to include the Parliamentary title?—Certainly, provided you give the Masters the staff they ought to have.

1668. Do you agree in this, that a Master now selling estates by a round-about way, where it does not fall within the principle of your court, ought to have the same power that you have to sell by a short and cheap deed, and to give a Parliamentary title?—Yes.

1669. And he has the machinery at this moment, though it is not so perfect as it might be made?—Yes.

1670. He has an office, and sells the estates there?—Yes.

1671. Of course you observe that the Bill does what you suggest; that is, it gives to the Master an original jurisdiction at the commencement of the suit; a jurisdiction to pay away the produce by cheque, in the same manner as you do; do you approve of that?—Yes.

1672. And if that power is given to any number of Masters that the Committee choose to report ought to have it, and if they get a proper staff, there is no doubt that they would sell just as easily and as fast as you could?—I have no doubt if you give them all the power that we have, that they would do the business as well.

1673. The purchase-money would be in court, to be disposed of on equitable principles by those who are accustomed to dispose upon those principles every day?—Yes.

1674. From your court at present the appeal lies to the Privy Council?—Yes.

1675. Do you approve or disapprove of that tribunal?—It is a little deficient in patience, but otherwise it is a good tribunal.

1676. And it is liable to this objection, is it not, that its members fluctuate; the same persons who hear the argument may not be there at the decision?—That rarely happens; they hear the case very quickly, and get rid of it.

1677. You now grant appeals frequently, do you not?—Wherever there is any point of law or fact in dispute, we grant an appeal; but we do not grant an appeal upon a mere point of practice of the court.

1678. You grant issues to try questions by juries, do you not?—Yes.

1679. And sometimes you direct bills to be filed in Chancery?—Yes; there are a good many matters in which we do not think that we have jurisdiction, and they are sent to another court.

1680. Has it sometimes happened that an estate has been in three courts at the same time?—It might happen.

1681. In a court of law, in the Court of Chancery Receivers, and in the Incumbered Estates Court?—It may happen.

1682. What becomes of the produce at the end of that?—I do not think it has happened. In such cases part of the produce goes in litigation, but not much more than if it were done in one court; the investigations would equally be gone through if those cases were confined to one court.

1683. Do not you think that it would lessen the trouble and expense materially to have the jurisdiction confined to one tribunal?—Certainly, and that was partly the reason why the Commissioners of Inquiry suggested the transfer to the Court of Chancery; that it was better to give the jurisdiction of the Incumbered Estates Court to the Court of Chancery, than to give all the jurisdiction of the Court of Chancery to the Commissioners of the Incumbered Estates Court.

1684. And as to the expense, I believe the solicitors cannot complain, and do not complain that they have been unfairly remunerated in your court?—I believe they are very well satisfied on the whole.

1685. They have funds to the amount of 260,000 *l.*?—Yes.

1686. Your advertisements costs you 77,000 *l.*?—Yes.

1687. They

1687. They approve highly of the plan of advertising?—If you mean to sell an estate to advantage you must advertise it well.

1688. And in addition to that, you are obliged to advertise to pick up the claimants?—I think it is of service in that respect.

1689. Have the surveyors large funds?—Yes.

1690. Do you know to what amount?—I do not know.

1691. Is the expense of a sale in your court, greater or less than the expense of a sale at this moment in the Master's Office?—I believe it is considerably less.

1692. Is that difference constituted of the stamps and fees?—Of the stamps and fees principally; and the proceedings in the Master's Office are more expensive, owing chiefly to the Master not being an original Judge.

1693. If the plan proposed by the 15th clause were adopted, would that remark apply?—Even there he is not an original Judge; there is a hearing before the Lord Chancellor.

1694. That is abolished, and the procedure before the Master of the Rolls is likewise abolished, so that that time is saved?—Yes.

1695. They are improvements, you think?—Yes.

1696. What would be the saving to the public by the abolition proposed in that measure of mine of the first and last proceeding in the Court of Chancery?—I could not tell, yet I know that it would be very considerable, because when the Master was exercising his own judgment, his reports and acts would be much more decisive, than where he has to put something on the record to satisfy another what is to be done.

1697. If the stamps and fees were abolished there would be another saving?—Yes.

1698. Are you aware that under that 15th section of Sir John Romilly's Bill, persons have filed petitions in Chancery to recover so small a sum as 40*l.*?—Yes. I was, as trustee, obliged to do it myself once, and we recovered the money; and I desired the attorney to keep the money for his costs, and I gave him a cheque for 40*l.* more; and so the matter closed.

1699. Was that a litigated case?—Yes.

1700. Have you heard of cases of persons filing petitions for 50*l.*, and recovering as much as much as 40*l.* from the opposite party?—I have not heard of such cases.

1701. Have you heard from any Master that, in the case of a farmer's estate worth 400*l.* it has cost 20*l.* to wind up that estate and to distribute it among the members of the family?—No. I think it ought to be done.

1702. Mr. *Kirk.*] Did not you state that you were occupied only three days in each week with the proper business of your office as Commissioner?—I said that three days were taken from us, so as to be nearly worthless for other business. I am occupied two days in the week hearing appeals, and the third day I am occupied in selling estates.

1703. If you were relieved from the labour of those last three days, would not you be able to do double the amount of business that you now do with greater ease to yourself?—No; I could not do so. I could not read many more abstracts of title. I have very hard work reading abstracts of title and making inquiries. I could not do double as much work, but I could do more.

1704. Can you now do in three days as much as you could otherwise do in six?—No, I could do more, but not double, because my evenings would not be doubled in number. Now I am at work in the evenings; the time before the public would be doubled, but my time for reading would not be doubled.

1705. The Committee have been informed that it is most essential that a person holding your office should be an experienced conveyancer. Is a clear and full knowledge of conveyancing essential to a Chancery barrister?—I think it is most useful, and he cannot rise to eminence without it.

1706. Without speaking of present appointments, would not future appointments to the office of Vice-Chancellor most likely be made from the ablest men at the Chancery Bar, or from the ablest conveyancers?—That would depend upon the Government of the day, whether they took the ablest men from any class.

1707. Supposing the Government were desirous of making the best appointments, would they take them from the ablest men at the Chancery Bar, or from the ablest conveyancers?—From the Chancery Bar; there are no conveyancers, specially as such, in Ireland.

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1708. Suppose that a proposal was made to increase the staff of the present Incumbered Estates Court, to transfer its sittings to a court or chambers in the Four Courts, and there was one Judge appointed to do such business, and such alone, as is now done in the Incumbered Estates Court, would not such an arrangement be useful in practice and satisfactory to the country?—I do not think one Judge will be able to do it, in consequence of the abstracts of title that he would have to read. One man could not read the abstracts of title; he could do a great deal of the motion work, but not the work connected with the reading of abstracts.

1709. I understood you to say on a former occasion that the two Vice-Chancellors would be able to do the whole work of the Incumbered Estates Court and all the business done by the Masters?—Each having two able clerks and junior clerks under them, who would relieve them of a great deal of the work which the Commissioners now do.

1710. You would increase the staff?—I think no increase of staff would suffice for one man, because still you must have two men to read the abstracts of title—unless you adopted the system of having a roster of men to read the abstracts—but if the Judge reads them, one Judge will not be sufficient.

1711. Supposing there were two Vice-Chancellors appointed, one to do the business now transacted in the Incumbered Estates Court, and the other to do the regular Chancery business, would not each, from his previous knowledge and constant practice, be likely to do the business of his court better than if both kinds of business were mixed up together?—I think not; I think the very answer that I gave to your first question shows that, when I said a Chancery barrister must be an experienced conveyancer. The two things are so mixed up, that I think it would be desirable that they should each have a little of each, otherwise you have but one man to read the titles, and one man could not read all the titles.

1712. If the Incumbered Estates Court were continued at all, it would require two Commissioners or two Vice-Chancellors?—In any case there must be two men to do the work, unless you throw the reading of abstracts of title off them.

1713. I know that the Incumbered Estates Court is extremely popular in Ireland, mainly because its rules of procedure are so simple and summary; would the machinery of the Court of Chancery, as proposed, either by the Bill of the Attorney-general, or by the Bill of the honourable Member for Enniskillen, be equally simple, cheap, and summary?—Very nearly so; there is no objection; the Judges would be called upon by the public to make the rules cheap and summary. When the Judges make their own rules, the public see, and have the right to understand the practice, and they would call upon them to make the rules cheap and summary.

1714. Do you still adhere to your former answer, that if there were two Vice-Chancellors appointed, they would be quite equal to perform the duties of the three Commissioners of the Incumbered Estates Court, and also to get through the accruing business before them as Vice-Chancellors from the Court of Chancery?—That is the leaning of my opinion, certainly; I may add that in the Commission we were unanimous in that opinion, including ex-Chancellor Blackburn, the present Chancellor Brady, the present Attorney-general, the present Master of the Rolls in England, and Mr. Brewster, the late Attorney-general.

1715. Mr. *Macartney.*] You stated in your former examination that in your court the inspecting of the abstract titles has been done by yourself and Mr. Hargreaves; but with regard to Baron Richards, you did not know the practice, whether he has done it himself, or whether it has been done by his son?—I stated that he does read the abstracts of title; but I said that I did not know whether, when counsel's opinions were taken, his son was frequently employed or not.

1716. Supposing the court to be continued and to be removed to a proper place, would a great deal of the complaints of the profession be removed by appointing a Title Master, whose business it should be to read the titles and report to the Commissioners?—I do not think that would have anything to do with the complaints of the public; I never heard the public complain of our reading the titles ourselves.

1717. Would it remove the delay of business?—I have titles now read in advance to occupy me with, as much as I think it prudent to sell before January next.

1718. Then you have spare time?—When the vacation comes I work as hard as

as I can at the abstracts of title, and direct the sales, and then I get ahead of my business, but it gains on me during term.

1719. Sir *E. Perry.*] With respect to the constitution of the new court which you contemplate, I gather from you that you think that the appeal which is now made to the three Commissioners should no longer have place?—No, of course not.

1720. I gather from the evidence in your Report, that that system works extremely well; it is very cheap, produces uniformity of decision, and is approved of by the profession?—Yes.

1721. Notwithstanding so very good a result, you think that it is desirable to do away with it?—Yes, I do; because I think that the Court of Appeal which is proposed by either of the Bills before the Committee, would give equal satisfaction to the profession, and would work as well.

1722. Does not the present system enable parties to get the decision of the three Commissioners upon the most simple terms possible?—And the new Bill would enable them to get the decision of the Chancellor and two Lords Justices upon the same terms.

1723. You have an appeal now to the Privy Council?—Yes.

1724. Therefore the public would be deprived of the benefit of getting an appeal upon very simple terms. If the new system is adopted in every case where the parties are not contented with the decision of a single Commissioner, they will go to an expensive court of appeal?—I hope that it would not be more expensive than our present court.

1725. Is it likely that the new Court of Appeal will be so simple in its form, and so economical, as that which you now hold two days in the week?—It ought to be. There is no necessary expense attending an appeal, except the expense of giving a court of appeal full information; and unless they make rules to create expense, I do not see why calling a man a Lord Justice of Appeal should make the appeal more expensive than calling a man an Incumbered Estates Commissioner.

1726. Does not all our experience show that it must be so. Take, for example, an appeal to one of the common courts in Ireland, or in England: the appeal, in point of fact, is simple, economical, and satisfactory. Then, if a case goes up to a full Court of Appeal in the Exchequer Chamber or the Privy Council, the appeal is very expensive, complicated, and therefore onerous; is not that so?—An appeal to the Privy Council in Ireland is not considered very expensive.

1727. But it is more expensive, is it not, in fact, than the primary appeal which now exists?—It is not a very expensive thing, it is something more; there is a deposit of 10*l.*, and there is the printing of the cases.

1728. What advantage would there be in doing away with the primary system of appeal, which has worked so well?—Giving the time that you thereby gain to the Commissioners.

1729. If the Commissioners are doing most useful work to the public on the one day of appeal, is not it a great evil to the public to do away with that advantage?—No, because we substitute a better court in its place, and we give an appeal to the House of Lords.

1730. Is not the effect of that mode of taking the opinion of the three Commissioners that, in nine cases out of ten, it stops the necessity of further appeal?—I think it does.

1731. Those nine cases would all have to go to the upper Court of Appeal?—Yes.

1732. And you think that that would be no evil?—No, I think not of any consequence.

1733. With regard to the rules that you object to, as being laid down by an Act of Parliament, your objection is that they become inflexible?—That is their tendency, of course; and if they are not inflexible, what is the use of laying them down?

1734. You have laid down, as your golden rule, that wherever moderate diligence is used in the pursuit of justice, it shall not be frustrated by a point of form?—Yes; I think it should be considered the Judge's fault if that frequently happens.

1735. That is adhering to an inflexible rule when the Judge sees that it works positive injustice?—Yes.

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1736. And you think that he ought to have the power of altering a rule where it does so?—Yes.

1737. With regard to the Masters giving a Parliamentary title, has not your court been found to work so well because the public have great confidence in the intelligence and skill displayed in reading the abstracts?—No; I think they really love quick justice so much, that they would be equally satisfied with the reading of the abstracts by any persons.

1738. Your colleague said, that it was most expedient that very great skill should be applied to the reading of the abstracts?—Of course it is most expedient, as some one must suffer for every mistake that is made.

1739. Have you read the evidence of the Master of the Rolls in England, in which he stated that he did not consider himself competent to pronounce authoritatively upon such abstracts?—I have heard that he said that; he underrated his own abilities, I think.

1740. You are aware that the Masters in Ireland have never read titles themselves, or given their opinions upon them?—I rather imagine that some of the Masters read the titles very carefully, and see that they are all right.

1741. Is it not the constant practice, both in England and Ireland, that the Masters refer the titles to some conveyancing solicitor?—They require a certificate of a counsel that the abstract of title discloses a good title, and such as a purchaser must accept.

1742. Will you allow me to refer you to the evidence of your brother, who is a Queen's counsel, in which he states that the Masters do not give any opinion?—But they require an opinion to be given to them before they will post an estate for sale.

1743. He says, "The essential difference between a sale by the Commissioners and the Court of Chancery, as at present conducting its sales, is, that in the one the Commissioners really sell, investigate, and adjudicate carefully and solemnly on the title. The Master in Chancery does not." Is that correct?—Yes.

1744. Would it be wise to transfer to the Masters in Chancery in Ireland the power of adjudicating carefully and solemnly on a title which they are not accustomed to?—They are accustomed to most of the business, and I think they would be competent to do it, and such Master as was not competent would not undertake to do it.

1745. Mr. *Fitzgerald.*] With reference to the appeal from a single Commissioner to the whole court, that is at present done in your court by a simple motion?—Yes.

1746. If that appeal was transferred to a higher court of appeal, would they not require copies of the documents, and everything, in fact, which already exists in your court, but which is not requisite when an appeal is made to the three Commissioners?—I think it could be very readily transferred from one court to another; it would all belong to the same court, and we should give an order to have those documents sent down.

1747. You think that the course of appeal would be quite as simple, in the case of a court formed of the Lord Chancellor and the Lords Justices of Appeal, as it is from one Commissioner to three Commissioners sitting in the same court?—Not quite, but it might be very simple.

1748. What is generally the nature of the questions upon which an appeal is made from one Commissioner to the three Commissioners sitting in full court?—The construction of a deed, the priority of a charge, the giving compensation for variation between the rental and the estate sold, or the validity of a tenant's lease; in fact, on every point which comes into litigation a man may say, "I move the court;" and he does move the court.

1749. Is that appeal now a matter of right, or is it given only by the Commissioners?—We consider it a matter of right; it was intended that the Commissioners should adjudicate upon questions before them, and every adjudication made by a single Commissioner is almost in the nature of an adjudication by consent.

1750. Is the amount of appeals from one Commissioner to the three Commissioners very considerable?—It is, but not in proportion to the work done.

1751. Are those two days upon which the full court sits for hearing appeals generally fully occupied by that business?—They are fully occupied by that business;

business; it is the only part of our hearing business that is apt to run in arrear.

1752. When, in a former answer, you said that you thought it the proper course of policy that, without much expense or difficulty imposed upon him by technicality, the suitor should be entitled to say, "I prefer the opinion of three judges to the opinion of one," you think that the appeal would be equally prompt by this high court of appeal which is proposed to be constituted?—Provided the rules are properly framed.

1753. Did you see, in Mr. Hargreave's evidence, that he made a distinction between what he termed the ministerial duties of your office and the judicial duties?—I did not see his evidence.

1754. He expressed an opinion that what he termed the ministerial duties were quite as important as what he considered the judicial duties of your office; do you agree in that opinion?—I do not entirely know how he distinguishes between the two duties.

1755. What duties do you propose to transfer to your chief clerk?—All sales by auction, all conveyances of estates, all references to tenants to inquire into the tenancy of an estate, the settling of the rental, the settling of the allocation schedule when a final schedule has been ruled, on the first Monday; the seeing that the abstract of title corresponds with the rules made (that is different from judging on the abstract), and seeing that the different statements in the abstract are duly verified.

1756. With respect to those two last, they are duties which your examiner now performs?—No, they are not performed except by the Commissioner; it gives the Commissioner, therefore, a great deal of additional trouble.

1757. Who performs the duty of verifying the abstracts by the deeds?—That part is performed by the examiner; but I get an abstract of title, and read it all over, and I find that I cannot report upon it, because it is so badly drawn as to leave me in ignorance what the title is, and then I have all that trouble for nothing, which a good clerk would relieve me from, because he would say, "This is not a proper abstract; you must amend it."

1758. Is there any other part of the duty that you would transfer to your chief clerk?—Generally speaking, the Judge might transfer such of his duties as he was perfectly willing to undertake the responsibility of himself.

1759. Mr. *Whiteside.*] Should such a chief clerk be a barrister?—I should say, perhaps, the best chief clerk that could be got would be an English conveyancing clerk; they are better accustomed to that kind of duty. I think that should be done until the practice of conveyancing is better known by the solicitors and the profession generally in Ireland.

1760. Mr. *Fitzgerald.*] With reference to the ascertaining of tenancies, is not that a very important part of the duty, inasmuch as if the tenancy does not appear upon the conveyance of the court, the rights of the tenant are extinguished?—Yes, it is very important.

1761. Is not that in effect ascertaining the right of the tenant to his estate?—Yes, it is.

1762. Is not that a duty which would more properly belong to a Judge than to a ministerial officer, such as the chief clerk. I think not, because in 99 cases out of 100, or a far greater proportion, there is no dispute as soon as the thing is claimed; the tenant shows the lease, and then the lease is put off. To have that process performed in the presence of a Judge, would be taking up his time very injuriously to the public. If the lease is disputed, the chief clerk hears the grounds of the dispute, and then if there was any ultimate dispute, the Judge should decide on it, but the chief clerk should settle it. The Master does it now, and appeals to the Judge are very rare.

1763. What do you mean by transferring the conveyances to the jurisdiction of the chief clerk?—Having to settle the conveyance, they see that it is in accordance with the rental.

1764. Do you now perform that duty?—The Master now performs it, and I read over the conveyance afterwards, to see that it is framed in conformity with our rules.

1765. Are those duties, of seeing that the conveyances are proper, now performed by the Master?—Yes.

1766. The ascertainment of the tenancies is principally done by the Master?—Yes.

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1767. The seeing that the abstract is verified by the deeds is done by the examiner?—Yes.

1768. Those ministerial duties are duties which are already not performed by the Judge?—Some of them are not performed by the Judge; but they would be much better performed by the chief clerk than by the Master. The chief clerk having his chambers with the Judge, is in constant communication with him. Now we lose sight of the case altogether.

1769. Still, as they are not performed by the Judge, the transference of those duties to the chief clerk would not be relieving the Judge?—No; some of them would be relieving the Judge, such as reading the conveyances and settling the draft of the final schedule of incumbrances; that is the allocation schedule.

1770. With reference to the power of conveying unincumbered estates, would not the expense of conveying an unincumbered estate be much less than the expense of conveying an incumbered estate?—I think not.

1771. Maps and surveys would not be required in the case of an unincumbered estate, would they?—Yes, they would be required much more; because it would be necessary to see that the man, where there was no adverse interest whatever, was not selling in order to make a bad title good. I think that one great use of the survey is this, that it gives notice on the spot that we are about to sell that estate, and all the people who have land near it can come in and complain if the map is deceptive.

1772. In the case of unincumbered estates you contemplate still continuing the map?—I do. The title disclosed fully shows what the estate is which is sold; but where the title proceeds solely on the conveyance of the Commissioner, anything that passes fairly passes by the deed.

1773. The only difference would be that it would not be necessary to advertise the schedule of incumbrances?—Yes, that is the chief difference.

1774. In reference to the Court of Appeal, you contemplate transferring to the Court of Appeal those appeals which now occupy you for two days in each week?—Yes.

1775. The Chancellor and the Lords Justices would also sit in appeals generally from the Court of Chancery in other equitable matters?—Yes.

1776. Do you suppose, with that business being put upon the Chancellor, it would be possible for him to sit as a Judge in original cases in the Court of Chancery?—I think it would; he could not hear much, but some cases he could hear.

1777. You think that with two days fully occupied in hearing your appeals, the other three or four days in the week would not be occupied by appeals from the Masters, sitting under the 15th section of Sir John Romilly's Act, and appeals from the Vice-Chancellor and the Master of the Rolls?—There would not be one quarter so many appeals to the Lords Justices of Appeal as there are now to us, because when a man sees that it is a difficult case, and must be heard carefully one time or other, he at once expresses a wish that it is better to have it heard by three, and very often the Judge at once gives his judgment in order not to put the party to very much expense in arguing it twice, and says, it is so and so.

1778. Is not that a great reason for continuing the Court of Appeal in its present form?—No, because I think then the case would be heard carefully and fully at once.

1779. Mr. *De Vere*.] You have proposed to transfer the auction duties from the Judge to the clerk; do not you think that the fact of a Judge presiding at the auction, gives great confidence to the public and protection to the seller?—Some; but I think it is too dearly paid for, by having a Judge sitting there all day selling estates.

1780. If the Judge thinks the biddings deficient as compared with the real value, he has the power, which I believe he sometimes exercises, of postponing that lot?—Yes.

1781. The chief clerk would not have that power, unless the Judge was to put an upset price upon the lot?—No; I think that if an estate is properly advertised, on the whole, the nearer you come to peremptory sales the better.

1782. Do not you think that the present discretion exercised by the Commissioners in postponing the sale, is a salutary protection to the seller?—I have very serious doubts; and certainly the more our experience extends, the more we become favourable to the sales being peremptory; it gives confidence to the purchasers

purchasers when they know that if they come there they are sure of buying the estate; we have exercised our discretion in that respect with the greatest caution, and yet we have sometimes refused prices that we never could get again.

1783. Mr. *Henley*.] You have stated very strongly that you think that a power of sale, giving a Parliamentary title, ought to be extended to unincumbered estates?—Yes.

1784. You have stated also that you do not think many unincumbered estates would take advantage of it?—Not very many, I think.

1785. You have stated also that you think the Parliamentary title is getting worse every day, and the other title is getting better every day, by efflux of time?—Yes.

1786. If nothing is done to raise any fresh incumbrance upon the Parliamentary title, why is it getting worse?—There is always the trouble of searches, and there are the transfers of title by death, by which you lose the Parliamentary title.

1787. An estate held by Parliamentary title is not more subject to that than another?—No; but I think in 15 or 16 years the two would come to about the same value.

1788. The only difference being this, that in 15 or 16 years you have a clear beginning with a Parliamentary title, and you have none with the other?—No; but the title is getting better, the longer back it is.

1789. Still the advantage must be very greatly in favour of that which is definite?—Not after a few years.

1790. With reference to the question of the Parliamentary title, it being your opinion that unincumbered estates would not be sold on that account, have you any opinion as to what would happen in the event of settling estates; suppose A. proposes a contract of marriage to B., and proposes to settle upon B.'s daughter a certain estate; in that case, A.'s title is investigated with nearly the same jealousy as if the estate were for sale?—That is not the Irish practice, certainly.

1791. What would be the habit of people availing themselves of this Court, whether it was the Court of Chancery or your Court, in seeing that the title of the estate about to be settled was good?—I think that parties would not have patience for that process. When a marriage was fixed upon, they would not like to have a lawsuit gone through before the marriage took place. It is not the practice in Ireland to investigate a title in that rigorous manner. The most that is ever done is to search back for a few years to know whether the party has been suffering judgments against him, and not even that sometimes. You have a traditionary knowledge of what the amount of the family estate is, and you have the character of the man himself as a guarantee for his not incumbering it.

1792. It may be of some consequence to know whether a man has the power to jointure his estate?—You look at a single deed. The man says, "I am tenant for life; I have power to jointure the estate;" that is quite different from going into an abstract of title. We must go back to see whether there may not be some small rental arising out of the estate, or a reservation to the grantor. We have to do that, because we have to decide for ever.

1793. There is a great deal of land in Ireland with a clear Parliamentary title: is it your opinion that if parties wishing to settle their estates in that way desired to obtain a Parliamentary title, they should have an opportunity of doing it?—That might be accomplished by their having power to sell; but I should look with the greatest jealousy upon their doing it; it is what I am afraid of at present; for the most unsafe part of our jurisdiction is where there is no necessity for selling.

1794. It being your opinion that you would allow a sale to take place with a Parliamentary title, but not a settlement to convey a Parliamentary title, what step would you take to prevent collusive sale?—It would be almost impossible to do that; the method that I should adopt would be to take care to have the scrutiny in all such cases so very rigid as to prevent the likelihood of it.

1795. If it is almost impossible to prevent collusive sales, and a great evil arises from their taking place, do you still, under those circumstances, adhere to your opinion that it would be wise to suffer such property to have a Parliamentary title?—Indeed I think it is desirable, if you give a Parliamentary title to sales for incumbrances, because you will only drive persons to put incumbrances on the property. I cannot distinguish whether an incumbrance was put on, two years ago, for the purpose of having a sale take place.

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1796. As you cannot guard against a collusive sale, and as you cannot guard against a collusive incumbrance, because an incumbrance such as you have named would be a collusive incumbrance, you still, as a matter of permanent legislation, hold that it is desirable to obtain a Parliamentary title?—I think it is. I think so much good has resulted from it, that, with proper precautions, it should be continued, and a proper court should be constituted to give it effect. I do not think that we are competent now to do it.

1797. Is it your opinion, from the experience you have had of the evils which may possibly arise from collusive incumbrances and collusive sales, that those evils would have a tendency to increase or decrease, if the Legislation became permanent with regard to granting Parliamentary titles?—I hope it would not increase if the persons who sell have a proper staff of officers; they would be so much on the look-out for frauds that they would make it a very expensive and dangerous thing to attempt a fraud; at present I am very much afraid of them.

1798. Are you afraid of them now, from the insufficiency of your staff?—Yes, and from the pace we are obliged to go at.

1799. You would think that in any future arrangement it would be desirable perhaps to put a drag upon the pace of the Court, and introduce some of those checks which have been found desirable in other courts to prevent fraud?—I think we should increase the checks against fraud.

1800. Will you be kind enough to specify in what direction you would increase those checks, and to what extent?—I would increase them by requiring fuller evidence of all the steps in the title.

1801. How would that fuller evidence be given; would it be before the Commissioner, or before whom?—Before the Commissioner; unless the chief clerk, with the superintendence of the Commissioner, could do it; I think that is rather a weak point in our titles.

1802. Is there much business at present in the Court of Chancery as to dealing with fraudulent titles and conveyances, and matters of that kind?—Fraudulent conveyances and fraudulent titles are different things; it has something to do with fraudulent conveyances; but with regard to fraudulent sales by bad titles, the Court of Chancery has not very much to do with them, I think.

1803. You would impose those checks to the rapidity of the business, and that necessarily would increase the expense, would it not?—It would.

1804. To what degree do you think the expense would be increased?—I could not say; it would depend upon the nature of the title very much; I could not give even an average.

1805. All those advantages are now derived by the public of Ireland from the speed at which your business is being transacted, and probably in the main with safety; in your judgment, having had experience of it, you think it necessary to add other checks for a permanent system?—I should like to do it, certainly, if the system was to be permanent.

1806. Are those checks sufficiently provided for in the Bill?—I think so; I think that the power of having all those checks is sufficiently provided for, if there were people to do it.

1807. Are they provided, or might they be provided?—They are, in this way; the judge has the power of providing them; the responsibility is thrown on the judge.

1808. If the judge adds them, the future course of the Court might not be quite so simple and so expeditious and summary as it now is?—Not quite so simple nor quite so expeditious as it now is, I think.

1809. When you have given the opinion with reference to the comparative expense of dealing with property in one court and the other, have you made any allowance for those additional checks which you think ought to be put on?—No, I took the comparison so roughly, as not to render it necessary to make that allowance.

1810. Did not you state that you thought an unincumbered estate ought to be sold with as many, if not more, precautions, as an incumbered estate?—Yes.

1811. It is necessary to have a map to prevent your selling the land of somebody else?—Yes.

1812. One of the difficulties in parcelling land, is the identity of the parcels, is not it?—Yes.

1813. A fraud might easily occur in that respect?—Yes.

1814. In that particular, would any more checks be necessary to be imposed than are already imposed in your court?—We impose every check that we think of; if we think of more we will impose them.

1815. Has it occurred that you have sold the land of B. when intending to sell the land of A.?—No; but a little unoccupied portion of one may slip into another, by a mistake in the map.

1816. That is an easy way of stating the same thing, is not it?—It is; only that your expression might convey the idea that we were taking all A.'s estate.

1817. It is only a question of degree; the principle is the same?—It is a question of degree. I do not mean to say that an estate which a man had, and was in the enjoyment of, was by a mistake in the title taken from him; but a mistake in the map may occur; supposing a road was marked as the boundary on the map, but really it was not so, an error might arise in that way. It is a wrong done, that we ought to avoid.

1818. When this little slip has happened, then some other check has been devised to endeavour to stop it for the future?—Yes; when we see any danger of that kind we try to avoid it.

1819. Would it be a fair inference that much of what is now called the cumbrous machinery of the Court of Chancery may have grown up in consequence of the necessity of applying those checks to prevent one man getting hold of another man's property?—I think that the Court of Chancery, in proportion to its work, makes as many mistakes as we do.

1820. In proportion to their work, you think they make as many mistakes as you do?—I do indeed.

1821. With reference to the settled estates, if I understand you, you think that that would not be a matter which ought to be allowed to come into the category?—I think not.

1822. If a man is settling his estate in his family without sale, but is going to create an entail upon it, or any other matter of that kind, the parties wish to ascertain if the estate is his to settle; do you think, under those circumstances, when the haste is not so great, you would admit a man to get a Parliamentary title to his land?—I would not.

1823. Why not?—It is a point that we have often considered very fully. One of the reasons is, that it is very desirable that at the same time, with whatever we do, there should be the knowledge of notorious transfers of possession. It at once challenges all the world to see what is done, and they will find out if any mistake is made then; whereas, if you create a Parliamentary title, perhaps 10 years afterwards, a mistake will come out, and a complaint will be made; if you want to give redress, there is no fund for it; you give it out of the estate; you give no Parliamentary title. In the ordinary case where these slips occur, there is money to pay for them.

1824. When the estate is all in the possession of lessees occupying, what is the patent change that you speak of that shall notify to all mankind a change of title?—Every tenant is served with an injunction to make him attorn to the new purchaser.

1825. That gives no notice to strangers?—It gives no notice to middlemen or strangers; but if they do find it out, we have a fund to pay them from; whereas in the case of a settled Parliamentary title there is no fund.

1826. I understood you to say that the reason why you would not allow, in the settling of an estate, a Parliamentary title to be given, was, that in the case of a sale something passes that is notorious to all the world?—Yes.

1827. Where there is no change in the occupation of the land, where it is occupied by lessees, what is the thing that is notorious to all the world?—The tenant is paying the rent to a new man; he is refusing to pay the rent to the old man. If I am the middleman, I am just the person who soon gets notice that the tenant refuses to pay the rent, and says, "My reversion has been sold."

1828. It is immaterial to the tenant whom he pays the rent to?—He must pay it to the rightful owner, and he will soon find that out.

1829. It may be that the party may have no right to take the rent; reversioners might not have a right?—Some one will have a right to take the rent, and it is a case not likely to happen. If we transferred the possession, the new purchaser would find out the mistake, if it were transferred wrongfully.

1830. Assuming that fraud takes place, and that you are dealing with an estate as fee-simple when it is only a life estate, the reversioner in that case would have

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have nothing to do with the rents?—That is a case that would happen very rarely, if at all; I never knew of our being in danger of doing it; in Ireland the settlements are all registered.

1831. What is your opinion with reference to the sale or dealing with settled estates?—I think it might be desirable to permit settled estates to be exchanged or sold.

1832. To what extent?—Pretty much to the extent that is usually done now in ordinary conveyances of sale and exchange with proper consent.

1833. Mr. *Grogan.*] In regard to the sale of property taking place, how soon after the sale, on the average, is the produce of that sale distributed?—I think, on the average, four months.

1834. Would it be generally longer or shorter?—Most of the money is generally paid out within a short time after it comes in; I do not say all, but the great bulk of it.

1835. With reference to the middleman's interest in your schedule of charges on the property, might it not be possible that the whole amount of the money would be distributed before he had notice?—Quite possible, but it is not usual.

1836. Supposing it did occur, what remedy would there be in that case?—None.

1837. Might it not also be possible, in the statement of the rental, that an erroneous statement of the value of the property about to be sold in your Court should be entered?—Certainly.

1838. And if by accident the party whose property was so erroneously entered at a higher rent than he paid, or his agent, were ignorant of such entry, and the estate was sold accordingly, would that estate so sold be for ever subject to that increased rent?—I think it would.

1839. That question arose incidentally from an answer of the Master of the Rolls, in which he stated that a house which he himself purchased was set down at some 20 *l.* a year above the actual rent that he was liable to, and he discovered it in time and obtained the remedy. Supposing he had not discovered it in time, would he have had no remedy?—It could not have happened, because we should have discovered it at the time of settling the rental; for it is then the Master's duty to see the lease. We first see the lease, but lest there might be endorsements on the lease on the tenant's part, we also serve the tenant with notice of the manner in which we are going to sell; and if he objects, we pay the costs of his objection, and rectify it. If he does not object when the estate comes to be settled, the Master says, "Where is the lease?" and then it is rectified.

1840. The schedule of leases of the property is referred to the Master; that is done by the seller's solicitor?—Yes.

1841. That seller's solicitor, from accident or oversight, represents the property as 20 *l.* a year above what it is actually?—The Master says, You must represent that lease properly.

1842. Does the Master check every entry in the tenants' lease with the lease itself?—He is instructed to do so, and I believe he does; he first looks at the lease and ticks it off.

1843. If there should have been a reduction of the rental, what is done then?—If there was a reduction of the rental, the tenant would be bound, and would be damnified.

1844. It might occur that the tenant did not hear of it?—It might.

1845. In that instance he would be bound by it afterwards?—He would be bound by it afterwards, unless he found it out in time.

1846. Then the history of the transaction would be this: a purchaser under your Court purchases a house, and he alleges that this house and purchase, that he has so made, is represented to him and sold by your authority as producing a certain annual rent; the tenant says, "It is all wrong; here is my lease and title; I will not be liable to it"?—The tenant has no remedy unless he comes to us.

1847. Do you imagine that a court of justice would not interfere to prevent an oversight of that kind?—I think not; the purchaser would be damnified if he did not find it out in time; the Act is explicit that it is only subject to such leases as are mentioned in the schedule to the tenancies.

1848. I understood you to say that parties to a cause in your Court, when a difficult subject occurs, merely take the opinion of the Commissioner before whom the case may arise, knowing that it may come before the whole Court?—He is not prepared with counsel, and he says, "I should like to have your opinion, and will consult counsel whether it is worth hearing or not."

1849. Is the case that you refer to a general instance?—It is not the most frequent, but it is very frequent.

1850. Then the object is to have an opportunity of reconsidering the opinion of a single Judge?—Yes.

1851. And you consider that appeal from a single Judge's opinion, whether maturely considered or given in this *obiter* manner, is most desirable?—Yes.

1852. In the event of the Bill of the Solicitor-general becoming law, do you not consider that an appeal from one Judge to the full Court is desirable?—I do.

1853. Would you, under any circumstances, permit an appeal from the same Judge to the same Judge in the whole Court?—Yes; I have frequently known a Judge, upon re-hearing, alter his decision.

1854. Unassisted?—Unassisted.

1855. In constituting a new tribunal and new authorities, would it be preferable that that Court of Appeal should invariably consist of more than one Judge?—I think it would be better to have two Judges, or three; the number I am not very particular about.

1856. You see no serious objection to that Court of Appeal consisting of the Judge, against whose judgment it is an appeal?—It is merely a re-hearing at the pleasure of the party. It happens to be called in the technical language a re-hearing.

1857. That is an appeal from one Judge to the same Judge in another Court?—Yes.

1858. Mr. *Whiteside.*] With reference to fraudulent sales, is not the dealing with fraudulent sales a question of equity?—Yes.

1859. Under this jurisdiction, if a guardian bought an estate from a ward just come of age, and got the conveyance under your bit of parchment, does not that prevent for ever the possibility of its being rectified?—I think so, if the guardian sells it again.

1860. And annihilates that great branch of equity?—Yes, unless you come personally against the party.

1861. Do you agree with the judgment of the Lord Chief Justice of the Court of Common Pleas in reference to that property that was sold?—Yes, I do.

1862. That was a case in which property was conveyed which you had no right to convey?—I will not state it in that way, because two of the Judges of the Common Pleas decided that we had a right to convey; the matter was finally decided in equity, and the Chancellor decided that we had a right to convey it; it was in consequence of a word having slipped out of one deed that ought to have been in both. The word "and" was left out at a particular part.

1863. Do you hold with the opinion expressed by the Chief Justice of the Common Pleas as to the effect of the conveyance from the Commissioners of Incumbered Estates, that the estate of Lord Monck, he owing not a shilling to anybody, would pass under that conveyance?—I do.

1864. Mr. *Fitzgerald.*] In reference to extending this power of obtaining a Parliamentary title to the case of settled estates, I understood you to object to it, because there would not be the notoriety of a change of possession; does not the same objection occur in the case of a sale of an unincumbered estate when the original proprietor of that unincumbered estate is not himself in possession?—No; some one is in possession; and I think that the public know that there is a transfer, and the very auction makes the thing public.

1865. In the case of the sale of an unincumbered estate, you do not contemplate that sale being by auction, do you?—Yes, generally speaking.

1866. If I enter into a contract to sell my unincumbered estate to B., do you contemplate putting me to the trouble and expense of an auction?—No; but there would be very great precaution necessary to prevent a fraud.

1867. In such a case would not the same objection apply to the case of a sale from A. to B. that you held would apply to a settled estate?—Yes.

1868. In the case of settling estates could not you have every other formality, as regards advertisements and notices, as would also be requisite in the case of a sale of unincumbered property?—Yes; but when you have adopted all the precautions that are necessary, it would be found that the thing would never be adopted?—I would not give a power that I think would never be made an honest use of; it would be of no public use, and no honest private use.

Jovis, 24° *die Aprilis*, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Mr. Whiteside.
Sir James Graham.	Viscount Monck.
Mr. Grogan.	Mr. Henley.
Mr. Edward Ellice.	Mr. De Vere.
Mr. Henry Herbert.	Sir Erskine Perry.
Mr. Macartney.	Mr. Kirk.

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

Jeremiah John Murphy, Esq., called in; and Examined.

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1869. *Chairman.*] YOU are one of the Masters of the Court of Chancery in Ireland?—Yes.

1870. I believe you were a Master before Sir John Romilly's Act of 1851 came into force?—I was appointed on the 8th of August 1846, and his Act came into force on the 14th August 1850.

1871. So that of course you have had an opportunity of seeing the practice in the Masters' Office under the old system, and also since the new system has been established?—Yes, I have.

1872. Sir *J. Graham.*] In 1848 there was a petition from Lord Blayney to the Court of Chancery to enable him to sell certain property?—There was.

1873. By what Judge was that petition considered?—By the Master of the Rolls; it was referred by the Master of the Rolls to me as Master in the matter.

1874. Have you seen a report of the case?—I have; I read it on Saturday last. It is in the 11th volume of the Irish Law, page 183.

1875. The marginal note to that case is erroneous, is not it?—It is.

1876. The report did not recommend a sale, did it?—The report recommended a sale in a very equivocal way; that is, the report answered the reference as it was made by the Master of the Rolls. The Master of the Rolls made a reference, as well as I can recollect, whether having regard to two particular matters; viz., the value of the lands, tenements, and premises, and the amount of the incumbrances and charges affecting the same, it was expedient that the contract for sale should be carried into effect. As there was nothing in the Act of Parliament itself to prevent such sale, and as I was acting merely ministerially in making those inquiries, I was bound to state to the Master of the Rolls the value of the lands, and also the amount of the incumbrances, and the expediency of a sale in this regard, leaving it to the court to determine whether a sale should take place; my own judgment being, that no sale should take place under the circumstances. I therefore, at the conclusion of my report, carefully called the attention of the Master of the Rolls to the fact of there being limitation to unborn persons, and my own judgment was, that if I had to decide upon the matter judicially, and not merely ministerially, I should not have confirmed or assented to the sale.

1877. What was the judgment of the Master of the Rolls upon your report?—Mr. Reilly, the secretary of the Master of the Rolls, informed me on Saturday, that upon the return of my report, the Master of the Rolls refused to approve of the sale.

1878. Have you read this document, which purports to be the judgment of the Master of the Rolls?—I have read it.

1879. Have

1879. Have you any doubt of its accuracy?—None whatever.

1880. He dismissed the petition, did he not?—He did.

1881. And refused the application for sale?—He refused the application for sale.

1882. The Incumbered Estates Act had not then passed?—The Incumbered Estates Court Act had not then passed.

1883. And Lord Blayney obtained from that court a power of sale, which the Master of the Rolls had refused to him?—So I understand.

1884. *Chairman.*] At present, acting under a combined system, you both act as Master upon references made to you in the ordinary way by the Lord Chancellor and the Master of the Rolls, and you also exercise jurisdiction under the 15th section of Sir John Romilly's Act?—Yes.

1885. In acting under the 15th section of Sir John Romilly's Act, when the Chancellor pronounces his fiat upon petitions presented to him, your jurisdiction arises, and you continue to have the sole conduct of the cause down to its termination, subject to an appeal from any part of your decision?—Yes.

1886. The only part of the suit that you do not dispose of when acting under the 15th section of Sir John Romilly's Act is the distribution of the fund in court?—That is the only part of the substance of the relief prayed, or the suit, that we do not dispose of; but there are other matters which we cannot dispose of, which appear to be requisite, in order to the prompt administration of the Act, namely, we cannot direct parties to be served out of the jurisdiction; we cannot substitute service on such parties; we cannot make any order to amend, nor have we liberty to authorise a party to file a supplemental petition; and in that way we feel ourselves impeded, otherwise we could act much more promptly, and could dispose of the petitions within one half of the time that they now take in many cases.

1887. Those defects in your jurisdiction impede the operation of the Act in the Master's Office?—Certainly; I have often had petitions before me which came before me in the commencement of August, for I always took them up the instant they came in, in order to give directions, so as to have those directions carried out during the vacation, that is, by means of advertisements and other matters, and the preparation of accounts. I have often felt myself impeded by the want of that particular jurisdiction of directing a necessary party out of the jurisdiction to be served. We can not take important accounts according to the practice of the court, in the absence of such necessary party; therefore I made a rule that an application should be made to the court. If the Chancellor and the Master of the Rolls were not sitting, then of course there could be no application. The application is made in open court, and by counsel, until November Term.

1888. Take a case out of your own office; in order to remedy these defects, it is necessary in certain stages of the cause to make special application to the Lord Chancellor or to the Master of the Rolls?—Yes.

1889. And those are particulars with regard to which you think the Master could as well pronounce the order as in any other stage of the cause?—Yes.

1890. In carrying out the procedure of the court under the old system, do you preserve unaffected the old system; under the old system you made certain inquiries, reporting back to the Master of the Rolls, and he deciding on the case?—We cannot avoid that, because we have a code of rules still in operation, as regards the old system, with respect to all matters not within the 15th section of the Chancery Regulation Act. These are the general orders and rules revised by Lord St. Leonards in 1843, so that we have two systems to administer. Upon references from the Lord Chancellor or the Master of the Rolls, we are bound up by those rules of 1843, and in other matters we are left to our own discretion to a considerable extent, with the aid of rules that we have thought it right to make.

1891. With the exception of cases coming within the 15th section, all the other business of the court is administered according to the old system, by reference to the Master?—Yes.

1892. According to the present system, in the case of a sale of land in the Master's Office, does the Master investigate the title to the land at all, so as to see that the title is a good one?—I always do so most carefully; and there are abundant opportunities of doing so; I will explain the practice. Suppose it be either under the general jurisdiction, under a decree of the court, where a sale

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is directed, or the case of a sale directed by the Master. Under the old jurisdiction, in general cause petition, an application must be made to the court for a reference to the Master, to approve and settle the conditions of sale. And the Master of the Rolls very properly introduced an addition to orders of that kind which had not existed before; namely, that the Master, in proceeding on that reference, should not merely settle the conditions of sale specified in the notice, but should also add such other conditions as appeared to him to be expedient and proper. Therefore it was necessarily the duty of any Master not only to see whether the conditions proposed were proper, but also to ascertain and satisfy himself whether any other conditions might not be expedient or necessary; accordingly, I have never yet disposed of the conditions of sale without requiring the attendance of counsel. I have always required counsel to state to me the entire substance of the abstract from beginning to end, and scarcely a case has occurred in that investigation, noted at the time (unless it is sufficiently short to carry in my mind the short title, I note, when the matter is proceeding, what the particulars of the title are), in which I have not myself suggested, and been obliged to suggest, other conditions of sale. This necessarily involves public investigation, and a specific discussion upon the title. Besides, I may say in the first place, that the Master, who has either taken an account under the order of reference, or has made up his order for incumbrances, necessarily has had the specific incumbrances, and the whole character of the estate, and the title before him; he considers first those specific incumbrances, how far they may be liens upon the land; and in fact he must, in the first instance, in that way have the title before him for consideration. Afterwards, in the second place, upon either a reference to the present conditions of sale, or upon the notice before me, under the 15th section, I always inquire and ascertain, to my own satisfaction, whether the conditions of sale proposed by counsel are proper or satisfactory; and I may say that I almost invariably investigate that, so as to add and suggest some other conditions of sale.

1893. Are not the conditions of sale rather to provide against objections being taken to the title, and to protect a title that may not be good, than for any other purpose?—They are; but at the same time, you must investigate the title in order to see what protection it requires.

1894. I want to ascertain whether you, as Master, read the abstract of title that is brought into your office, and consider that abstract with a view to see whether the title presented is a perfect and good title?—Yes, in the third stage I always do; though it appears by the 130th general rule that that was scarcely contemplated. The Masters are acting in all these matters under the strict rules of the court, which all received the sanction and revision of Lord St. Leonards; the 138th general rule directs that no lands shall be put up for sale without the opinion of counsel being obtained, and when this opinion containing certain matters has been ascertained, "the Master shall inspect the abstract, and certify thereon, that, as far as he can judge, it is substantially a compliance with this order, and the Master shall not sign any advertisement for the sale of the lands if he has any doubt as to the correctness of the abstract." Now, it would appear from this rule, that it was not the intention of the framers of it to throw absolutely upon the Masters the exact investigation of the title; however, considering that I had to certify the title, I always required, even after the previous investigation connected with the settlement of the conditions of sale, that an abstract should be sent to me a certain number of days before the summons came on, for the purpose of certifying it; I always read every abstract of title, and carefully considered it; then, when the summons came on, having read the abstract, noted it myself, and considered it in the meanwhile, and having seen that it was in all respects proper, that all the proper parties were before the court, and that it was expedient to proceed to sell, then if there was any question, I discussed it with the counsel, had the doubts removed, and having satisfied myself of the correctness of the abstract in all respects, both in substance and in point of law, then, and not till then, did I ever certify; after this investigation I have sometimes repudiated the title, and refused to proceed to a sale.

1895. If in that investigation in your office any blot on the title appeared, you endeavoured to guard against it by a condition of sale?—Yes, provided there was such a blot as could be so guarded against. The practice of the Court of Chancery is never to sell what it knows to be a bad title; but there are certain difficulties in the way of evidence, certain impediments as to requiring

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in a leasehold the person selling to show the title of the head landlord; but if I see that the title is essentially a bad title, I always refused to sell; the court never guarantees a title, but it will never sell land with a bad title.

1896. Distinguishing between an absolutely bad title and a title which has a blot or cloud upon it, you guard against a blot, but you refuse to sell property with a bad title?—Certainly.

1897. Is the practice uniform in the offices of the other four Masters, to investigate in the same manner as you have described with reference to yourself?—Master Brooke does, to a certain extent, but not quite the same. He investigates the matter in court, discusses it with the counsel, has the deeds before him, and then he certifies it; but I always require an abstract to be sent to me before, and I read it carefully, and note it in every way that appears to me right.

1898. I judge, from the statement of Mr. Henn, that he adopts a different system, and also Mr. Litton and Mr. Lyle?—It appears they throw the responsibility upon the counsel, taking a general view of the abstract.

1899. After having gone to the expense of this investigation in your office, with a view to ascertain whether the title is a good one or not, and if there is a blot upon the title, to guard against it, still your sale gives no title to the purchaser if it should turn out a bad title afterwards?—Not against the whole world; but as against all persons who are substantive parties, or who otherwise intervene in the cause, it does give a title.

1900. In the investigation in your office, do you investigate at all the state of the tenancies?—No, I do not investigate at all the state of the tenancies, except in this way, that I require the abstract and the rental to be compared, to see what tenants' leases we have, then to see that they are all rightly represented; and I never approve of an abstract (though it is too much the habit in Ireland to do so) without requiring a specification of the tenants' leases, without seeing whether they are forthcoming, and, if not, what secondary evidence can be obtained; and, if necessary, I require the tenants' leases to be produced where there are no counterparts in the office.

1901. There is nothing on the face of the conveyance, or otherwise, in the Court of Chancery, at present, that will bind the tenant?—No.

1902. Have you referred to the Bills which are before the Committee, one of which is a Bill intituled "Court of Chancery (Ireland) Bill," brought in by myself and the Chief Secretary for Ireland, and also the Bills of the Honourable Member for Enniskillen?—Yes.

1903. Have you turned your attention to Part 5 of my Bill, that is the sale, partition, and exchange of real estates; in other words, that portion of the Bill by which it is intended to give to the Court of Chancery the power to sell, in the first instance, incumbered estates, to give it all the powers which are at present exercised by the Incumbered Estates Court. Forming your opinion, as an experienced officer of the Court of Chancery, do you consider it right that the Court of Chancery should be armed with those powers?—Certainly; I consider it right that the Court of Chancery should be armed with the fullest powers to sell incumbered estates with an indefeasible title.

1904. You see at once the great defect that exists in the present jurisdiction, that all the expense that has been gone to of investigating any title, even in the qualified way you describe it, turns out, to a certain extent, to be useless, as no indefeasible title is given?—To a certain extent, in the abstract, it is so; but there are very few instances upon record of any of those titles having been questioned.

1905. Have you not had, judging from your experience as a practising barrister in Chancery, and as a Master afterwards, a great many cases in which after a person has become a purchaser, and had absolutely bought and paid in his money, he has been discharged from his purchase on account of a defect of title?—Yes.

1906. The Court of Chancery could not carry out the sale, defects appearing which it could not guard against?—It could not.

1907. Supposing a person at present to purchase under the Court of Chancery, he has not, if he comes to sell again, any root to his title upon which he can safely go, in the same way that he has if he gets a conveyance from the Incumbered Estates Court?—Perhaps in the abstract he has not; but at the same time, where there has been a sale under the Court of Chancery, I almost always see

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that a condition of sale to the effect, that the purchaser shall not be entitled to require the vendor to shew any title anterior to the Chancery conveyance introduced and acceded to, particularly where the sale has taken place more than eight or ten years; but there are those impediments. It is perfectly plain, that it would be very desireable to remove all these difficulties and to insure to the purchaser a clear and indefeasible title as regards incumbered estates sold by the court.

1908. Since the Incumbered Estates Court Act, that is the Act of November 1849, came into operation, about how many sales of land have been carried out, that is, completed, in your office?—I do not know.

1909. I believe I am right in stating, that the sales, since the Act came into operation, have been comparatively few?—They have been very few.

1910. And in many instances you are aware, that after the proceedings have been carried on in your office, and a sale has been refused, the proceedings have been taken into the Incumbered Estates Court with a view to sell the same land with a perfect title?—Certainly.

1911. From that and other causes, the sales in Chancery since the Incumbered Estates Act came into operation have been very few, and very exceptional?—Comparatively very few.

1912. Supposing a jurisdiction to sell estates, with an indefeasible title, was given to the Masters of the Court of Chancery, have you any staff that would enable you to work out such new jurisdiction?—We have neither staff nor space.

1913. At present, in fact, when you describe your examination of abstracts, it is a personal examination, by yourself, without any aid?—It is a personal examination by myself, without any aid.

1914. I believe that the only officer attached to the court is the officer known as Master's Examiner?—There is the Master's Examiner, and also the assistant clerk.

1915. The Master's Examiner has not anything but ministerial duties to perform?—He has scarcely anything beyond ministerial duties to perform, but these, it will be observed, are, in my office, very important; I thought it right to provide a statement of the duties of the Master's Examiner, the assistant clerk, and the scrivenery clerk, which with the permission of the Committee, I will deliver in.

[*The same were delivered in, and are as follow:*]

DUTIES performed by Master's Examiner in Master *Murphy*'s Office.

1. To sign every summons which has been entered in the Master's long or short list, calling on the parties to attend before him.

2. To vouch and tot all Receivers' accounts, and committees and guardians' accounts, as soon as lodged in the office, previously to their appearing in the Master's list, and to mark the different receipts produced by the Receiver for payments made by him since passing his previous account.

3. To vouch all such executory accounts, and all such charges and discharges, as the Master may direct when same come on before him for passing or proving, and mark the different receipts, vouchers, &c., as produced by the parties.

4. To compare with the solicitor, or his clerk, every report and order to be signed by the Master previous to the transmission of same to the Register's office.

5. To take affidavits, swearing the parties as to the truth of same.

6. To examine witnesses to interrogatories when directed by the Master, and to write out their depositions.

7. On the occasion of every public letting, to inform the several tenants of the amount of lease money to be paid by them, to receive same, to attend at the stamp office, and bespeak and obtain the proper stamps, to prepare the leases and engross them, and attend the Master for execution of same, and to enter the retnrn of same in letting book, when executed by the tenant.

8. When tenant's recognisance is specially directed to prepare and engross same, to attend before the Master with the several parties to have same taken, and afterwards to enrol same in the office of Clerk of the Recognisances.

9. On the occasion of approving of tenant by proposal, on receipt of the lease money, to enter such proposal duly approved in the letting book, and then to attend at stamp office to procure stamp, to prepare and engross lease, and perform the other duties mentioned in Number 7.

10. To

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10. To receive all muniments of title, original deeds, and documents, mercantile books, &c., directed to be lodged in the office; to enter in muniment book or index, the name of the name of the cause and matter in which same are lodged; to lodge same in muniment office, and to give out same to purchasers, or other parties entitled, when directed by order of the court or of the Master.

11. To receive the fees paid into the office by the suitors, to enter same in my cash book, and to account for and lodge my balances in Bank of Ireland to the credit of Suitors Fee Fund Account, once in every month.

12. To attend on the different parties who are entitled by service of the usual notice, to inspect the several title deeds, &c., lodged in the office, and be present during such inspection.

13. Generally to superintend the business of the office.

Wm. Dl. Murphy, Examiner.

DUTIES performed by the Assistant Clerk in the Office of *Jeremiah J. Murphy*, Esq., Master in Chancery.

1. RECEIVING all copies of orders of reference directed to the Master, and marking receipt of same on back.

2. Entering all summonses or notices for the respective days appointed for the proceeding under each of said orders, and initiating such summonses previous to the signing by Master's Examiner.

3. Examining all receivers, guardians, and sequestrators' accounts, according as they come in for lodgment previous to giving summons, to pass same, to see that they are prepared according to the prescribed form directed by the Masters.

4. Entering all summonses for the days stated in summons, to proceed to pass said accounts before the Master.

5. Entering all other summonses and adjournment of summonses for the days stated in such summonses, to proceed on receivers, guardians, or sequestrators' statement of facts, or otherwise, as may become necessary in the progress of each cause or matter.

6. Entering the lodgment all receivers, guardians, or sequestrators' accounts in a book ordered by the court to be kept for that purpose.

7. Entering the day of lodging all receivers, &c., state of facts, the lodging of all charges, discharges, and drafts, personal interrogatories, when a summons becomes necessary to settle such drafts by the Master.

8. Entering the day of filing of all Master's reports and orders, when same are signed by the Master.

9. Examining all approbations of transfers of stock, investments of cash, or balances on receivers' accounts, initiating same previous to Master's signature.

10. Entering all sales and lettings for the respective days same are to be held.

11. On the days that each sale or letting is appointed to take place, entering the entire of the postings for such sale or letting in the Master's sale or letting book, previous to such sale or letting taking place.

12. Attending the Master on such sales and lettings with sale or letting book, and taking down the biddings on such sales or lettings.

13. Comparing certificates of all such sales and lettings, to see that they are accurately prepared from the Master's sale or letting book (by those requiring same), previous to Master's signature thereto.

14. When the Master certifies all receivers, sequestrators, or guardians' accounts, entering the date of all such certificates in the receivers' book (with very few exceptions, such as where the Examiner personally attends the Master, to get some particular certificate signed); also entering the balances certified to be either due by or to such receiver, &c., and also the order made by the Master on each such certificate.

15. Taking down from their respective bundles the different documents required by the Master to be laid before him on the hearing of each cause or matter, in both the long and short cause list for each day; returning same to their respective bundles at the end of each day when Master rises.

16. Searching for charges, discharges, state of fact, receivers' accounts, &c., for the inspection of the different persons requiring to see same.

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17. Comparing any orders made by the Master (not under the 15th section of the Court of Chancery (Ireland) Regulation Act), when such orders are entered by the solicitors or their clerks in the Master's order book, such duty of entering is obliged to be imposed on the solicitor, in consequence of the want of a sufficient staff in the Master's office.

List of Duties performed by Scrivenery Clerk in Master *Murphy*'s Office.

1. Taking directions for copies of all documents lodged in Master's Office, taking same out of their respective places, and when copied returning them, and marking the number of sheets on the attested copy, and returning same to the Examiner.

2. Taking directions for engrossment of all reports, and seeing that the notice of lodgement of draft has been served, and initialed by the proper officer.

3. Taking directions for the engrossment of Master's orders, and seeing that they are fit for his signature.

4. Comparing reports and orders with solicitors, when Examiner is otherwise engaged, and not able to do so.

5. Attending Master for the purpose of getting his signature to engrossment of reports and orders.

6. Filing reports, orders, receivers, guardians and committee's accounts, in the respective offices of the register and secretary of lunatics, when same are signed by the Master, and marking on the drafts the day of filing, and returning same to the assistant clerk, for the purpose of entering the filing of same.

7. Generally assisting every day in the business of the office; and, when the assistant clerk is engaged with the Master, doing his business along with my own.

Edward Baker,
Scrivenery Clerk in Master Murphy's Office.

1916. You have given your opinion as to the propriety of arming the Court of Chancery in some shape or other with a power to sell incumbered estates; have you turned your attention to the propriety of giving it a like power in the case of unincumbered estates?—Yes.

1917. Will you be good enough to give the Committee the opinion you have formed upon that subject?—In the first place, I may state that I believe there are very few unincumbered estates in Ireland; but it appears to me that it would be contrary, to a certain extent, to general public principles, unless there was a necessity for it, as in the case of an incumbered estate, that unincumbered estates should be sold through the operation of the Judges, and with a great increase of expense of staff, and otherwise, necessarily thrown upon the country. I do not see why the Court of Chancery, or any other court, should be a kind of expensive market for land, which there is no absolute occasion to sell.

1918. Is the only reason for your advising against giving the Court of Chancery this new jurisdiction the expense which it would entail?—No. Upon principle, I do not think that the State is at all bound to provide for, or that it is the proper function of the judicature of the country, to assist in the selling of unincumbered estates. It appears to me, upon principle, in the first instance, that that is not expedient or necessary.

1919. You are aware that at the present moment, according to the existing law, the owner of an incumbered estate worth 10,000 *l.*, but which has an incumbrance upon it of 1,000 *l.*, may go into the Incumbered Estates Court, and sell the whole of that estate with an indefeasible title?—I believe not; unless it be under a receiver, I fancy that it must be incumbered to a certain extent.

1920. Or the interest must be in arrear?—Or the interest must be in arrear.

1921. By law, at the present moment, if there is a receiver, or the interest is in arrear, or the interest of the incumbrance exceeds half the income of the estate, he may go in as a volunteer, and present a petition to sell his own estate?—He may.

1922. Can you state any reason why the owner of a partially incumbered estate should have the right to set the court in motion, and sell that estate with an indefeasible title, whilst the owner of an unincumbered estate should not have that right?—I fancy that there is this objection, that it is better in the first instance to see how you can work on with what appears to me to be the legiti-

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mate and necessary purposes of legislation upon such a subject with any judicature that you can provide. My own opinion is, that you will find in the general class of business to be done (what is called Chancery business proper), and in any portion of the duty you may delegate to any Judges or Vice-Chancellors, with reference to the disposal of incumbered estates, quite enough for them to do; and that is all, as it appears to me, that you can be reasonably called upon to provide for.

1923. That would be rather an objection to the staff and the expense than an objection to the principle; would you approve of giving to the Court of Chancery power to sell with an indefeasible title in all cases, at one sale, at present?—I would.

1924. If a testator makes his will, and directs that his estate shall be sold, any party claiming under that will, and instituting a suit to carry out its trusts, can compel the Court of Chancery to sell that estate, though it does not owe 1 *s.*?—Yes; it is the ancient jurisdiction of the court in carrying writs into execution.

1925. Assuming that the Court of Chancery was to get this power of giving an indefeasible title, there would be a numerous class of cases in which parties could, without incumbrances, compel that court to sell for them?—Yes; some.

1926. We might illustrate that by a great many other instances, and you would only except from the rule the unincumbered proprietor who did not devise some means of setting in operation the Court of Chancery to sell his estate for him?—Of course, if you make a will, if you introduce a power of sale or exchange, you can direct it, and set it in operation; but I do not see why an unincumbered proprietor should have that power. I would only sell for incumbrances, or in suits where on application to the Court of Chancery you could carry out the trusts of any will or any instrument directing a sale; but as to any party privately going in, wanting merely to transfer his estate, and using the machinery of the court for the purpose, I do not think that it would be right.

1927. Confining your opinion to the case of *boná fide* sales, you would not approve of giving the court power to sell, in such cases, with an indefeasible title?—I think that it would be dangerous, and I think that it would be unnecessary to do so; and, further, I think that you will increase your staff and expense to such an enormous extent that, in point of fact, the exercise of a jurisdiction of that kind would probably interfere with the carrying on of what appears to me to be the more legitimate business of the court.

1928. When you speak of the amount of business, and the expense, that must depend upon the amount of new business which the new jurisdiction would create. Have you taken any means at all to ascertain what the probable amount of new business might be which would be created by the sale of unincumbered estates?—I have not; my attention has not been directed to the matter further than reading the Bill.

1929. Of course the amount of that business would be considerably reduced, if the opinion which you gave a short time back was correct, that there are very few unincumbered estates in Ireland?—No doubt of it.

1930. If any checks were imposed upon the exercise of this new contemplated power of selling an unincumbered estate, such as, for instance, that a small per centage should be deducted from the purchase-money or otherwise, would that alter your opinion?—I think it would be right to guard in every way; first, that it is a *boná fide* sale, and then to put some check, in the shape of fees, or further additional expenses: but this would not alter my opinion.

1931. Would it be less objectionable, supposing it was guarded by checks of that kind to prevent its being abused?—It would.

1932. In reference to the amount of new business which this plan would generate, we may assume that in case the purchase-money was under 1,000 *l.*, it would not come into the Court of Chancery?—I do not know that it would not.

1933. A party having a small estate, the purchase-money of which would be 800 *l.*, would rather get what he could, guarding himself by the conditions of sale, than come into the Court of Chancery, and pay all the expense of selling an indefeasible title?—I am not so sure of that; I think that the expense would not deter parties, because the purchaser might require it, and I think the purchaser would be very likely to require it, if there were an easy court at a moderate expense, by means of which the matter might be effected. He would say, I fancy, I cannot be perfectly safe without this; the costs will only be so much, and therefore you had better do it.

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1934. Supposing in selling an estate of the value of 1,000 *l.*, the expense of procuring an indefeasible title in Chancery would be 10 per cent., do you think that the vendor would agree to give an indefeasible title at such an expense as that?—I think that he would, if he wanted to sell his estate; if he wanted to exchange, then the expense would be settled between the parties; but if he wanted to sell, he would want to raise money for the purpose of investing or applying it otherwise. In a case like that he would be required, and would not hesitate to go into any court that would enable him to give to the purchaser a satisfactory title.

1935. Assuming that he wants to sell his estate *bonâ fide* for the highest price that he can get, and that the expense of selling in the Court of Chancery would be equal to 10 per cent. of the purchase-money, do you think that the vendor would agree to give 10 per cent., paying for the indefeasible title a tenth of the purchase-money?—It would depend upon the value attached at the time to a perfectly unincumbered estate and a Parliamentary title. There may be a great value set upon it at one time, and perhaps there may not be so much afterwards. Perhaps if parties saw that the title was perfectly good, and perfectly unincumbered, they might be satisfied, and might not require it; but I fancy that in 19 cases out of 20 the purchasers would require it.

1936. If that is your view, of course you must come to that conclusion upon the supposition that they would set such a value upon an indefeasible title, that it would become an element of the contract?—Yes, it would make it an element of the contract; and I make no doubt that, particularly in small sales, where parties wanted to give perhaps the greater part of their means, they would like to have a secure indefeasible title.

1937. It seems to flow also from that, that the value of an estate with an indefeasible title must be very much above the value of an estate sold under other circumstances?—It may be so; everything depends upon the state of the market at the time; I have seen as high sums of money given for estates sold in the Court of Chancery, even pending these proceedings, as were obtained in the Incumbered Estates Court, and even higher prices; it will depend altogether upon the person's knowledge of the title, the position of the land, and the interest that the purchaser may have in getting it.

1938. Can you refer by name to a case in which an estate sold in the Court of Chancery fetched a higher price than it would have done in the Incumbered Estates Court?—As to referring by name to any cases, it appears that the purchase-money in the case of the Blessington estate was very large; probably the purchasers paid 24 or 25 years' purchase in a great many instances, and sometimes more, and I fancy they would not have paid more in the Incumbered Estates Court.

1939. Are you not aware that the Blessington estate was sold under an Act of Parliament?—Yes. I had a case before myself, in which I found that the bidders appeared to have made up their minds not to give more than a certain sum. There were a number of purchasers, and they appeared to me to have made up their minds not to give more than a certain sum, about 13 or 14 years' purchase; I refused to take that, being perfectly satisfied that the estate was worth 20 years' purchase, the estate being situated in the north of Ireland. The bidders were very angry with me, and said that the Incumbered Estates Court would have sold the estate before half the time had elapsed that we were discussing it; and they said they would not give one fraction more than 14 years' purchase, that they had been brought up to bid, and that it was quite a delusion our not setting the estate up to the highest bidder; I said that I would not let the estate go at that price; I was perfectly satisfied that it was worth 20 years' purchase, and I adjourned the sale peremptorily. They came to me in about an hour or two afterwards and asked me to put it up again; I did so, and every portion of the estate fetched from 19 to 23 years' purchase. I am satisfied that if that estate had been in the Incumbered Estates Court it would have been sold two hours before for 13 or 14 years' purchase; so that the estate brought a great deal more in the Court of Chancery than it would have brought at the time in the Incumbered Estates Court.

1940. Judging from those instances, do you come to the conclusion that the sales in the Incumbered Estates Court have been anything but beneficial?—I think that a great many of them have been precipitated and hurried on. At the present time, I believe, much greater care and caution are exercised, but I am perfectly

perfectly satisfied that a great many sales were at first precipitated most ruinously.

1941. What was the date of that sale to which you have last referred?—March 1851.

1942. Had you any sales of land in your office in the last year?—Yes.

1943. How many?—I believe very few.

1944. Had you 10?—I should say that I had.

1945. Had you one a month?—Yes.

1946. With reference to Part 7 of the Bill, in which the abolition of the Incumbered Estates Court is proposed, have you considered that part of the Bill?—Yes.

1947. In your judgment, is it a wise measure to abolish the Incumbered Estates Court, and transfer its powers to the Court of Chancery?—I think it is a wise measure to abolish the special jurisdiction of the Incumbered Estates Court and to transfer it to the Court of Chancery, provided you do not transfer to the Court of Chancery all the arrears now existing in the Incumbered Estates Court, for by that you would clog the Court of Chancery irremediably.

1948. Provided you do not transfer the arrears, in your judgment would it be better not to interfere with the Incumbered Estates Court at all, but to allow its powers of sale to expire, as they will do in July next, and allow the power of the court altogether to cease in two years and a half, or three years, which is the period which is fixed by law, and transfer only the new business to the Court of Chancery?—So it would appear to me; I am afraid that you would find the Court of Chancery perfectly swamped by the great arrear of business now existing in the Incumbered Estates Court in addition to its own business.

1949. Your view is that the Incumbered Estates Court, as it at present exists, should be allowed to exist, but you would clothe the Court of Chancery with the power of selling incumbered estates with a Parliamentary title?—That is my view.

1950. You have referred to Part 1 of the Bill, by which it is proposed to abolish the system of Masters, and to create two or more Vice-Chancellors in the place of the Masters, giving those Vice-Chancellors an efficient staff in the shape of chief and junior clerks; do you approve of that plan?—I do approve of it; I think it is quite right, and it is very important. I understand that it has worked very well in England; I see that that is the statement of Lord St. Leonards; and as the plan has worked very well in England, I make no doubt that it would be useful to act upon it in Ireland also.

1951. You have the additional advantage of approaching to something like a uniform practice in the two countries?—Certainly. We are quite at sea now, for want of a uniformity of practice. I would adopt, as far as I could, the practice of England, in order that the Judges and the Bar might, from the decisions as reported, have something to guide them.

1952. At present, in Ireland, you have the general system of the court working under Lord St. Leonards' rules, with the addition, from time to time, of new codes of rules by the present Chancellor, and also the system under the 15th section of Sir John Romilly's Act, with the varying practice in the Masters' Office?—Yes, we have all those rules, and it would be quite right and highly expedient to render the jurisdiction in some way or other uniform, but, above all things, to assimilate it as much as possible to the English practice.

1953. From your experience, you have formed some judgment upon the expediency of charging one Judge with the conduct of a cause, and all the power to conduct it from its inception to its final termination?—I think it is very important to charge him with the conduct of the cause. Its general supervision should be by the chief clerk, under the direction of the Judge, and the Judge should sign and approve of every order or certificate made by the chief clerk.

1954. And you would take care, as far as is practicable, to guard against the chief clerk becoming, in effect, a Master?—Yes; and in that respect I think it would be very important that, instead of leaving to every separate Vice-Chancellor to say what duties he should transfer to his clerk, it should be directed or provided that a table of duties should, in the first instance, be settled by the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellors, and that this table of general duties should be hung up by all the chief clerks; for it will lead to great confusion in Ireland if one Judge transfers one class of duties to his chief clerk, and another Judge transfers another class of duties to his chief clerk.

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clerk. The public will complain of not knowing where they are to go, or what they are to do. It would be very desirable, now that the practice has been understood in England, and has worked, I understand, so satisfactorily, that there should be a table of duties for the chief clerk, as settled by the Lord Chancellor, Master of the Rolls, and the Vice-Chancellors, hung up in the offices, in order that every suitor and practitioner might know where to go, and what duties are to be performed by the one and what by the other.

1955. You would not propose to do that in the Act of Parliament, but you would leave it to the court to regulate by order?—I would leave it to the court to arrange; but I consider it extremely important to provide in the Act of Parliament that this specific thing should be done. In England probably it was not necessary; but in Ireland, particularly, it is of vast importance that it should be provided for by the Act of Parliament that this table of duties should be made out in the way that I have stated, and suspended in the offices.

1956. There is in this Bill at present before the Committee power given, and it is rendered mandatory upon the new court, that is, the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellors, or any three of them, to make general orders to regulate in everything the practice of the court?—I merely submit this as the result of my own experience and my own view; but I would urge on the Committee, as the result of that experience, that it would be right to provide for this specific matter being done in the Act itself.

1957. You would wish that there should be in the Act a mandate upon the new court to frame general orders to regulate the duties of the chief clerk?—Not in general terms; I would do that to a certain extent. Instead of leaving to each Vice-Chancellor to say what duties his chief clerk should do, it would be right to provide that the Lord Chancellor, Master of the Rolls, and Vice-Chancellors should determine the duties to be performed by all the chief clerks.

1958. With reference to the appointment of the chief clerks, would you approve of placing the appointments in the hands of the Vice-Chancellor, the Judge as whose chief clerk the officer was to act, or would you give it to the Executive?—I think it quite right to give it to the Judge, subject to the approval of the Lord Lieutenant or the Lord Chancellor: I would say that, of the two, the Lord Chancellor would probably be the better.

1959. You think that it would be freer from objection if you were to give the veto to the Lord Chancellor than if you were to give it to the Executive?—I think so; I am perfectly satisfied that it would be considered freer from objection to give it to the Lord Chancellor.

1960. A Vice-Chancellor might have a brother of whom he had a very good opinion, and if he proposed him to the Lord Chancellor, who had a different opinion, there might be between two Judges of the same court a great deal of delicacy by the Lord Chancellor putting his veto upon such an appointment?—You first assume that the Judge would propose an incompetent person. I really cannot conceive how any one conscientiously, for his own sake, would appoint an incompetent person to fill the very important office of chief clerk. There certainly may be that difference, that it places the Lord Chancellor in the invidious position of questioning the appointment of his brother Judge. I did not see it in that light before.

1961. Supposing the veto to be given to the Executive with regard to Ireland, it would be exercised by the Executive under Parliamentary responsibility, and most probably the Chancellor would be their adviser in the exercise of it?—I think so.

1962. Do you see any objection to placing the veto in the Executive?—No, I see no objection to it; I now think, that upon the whole, that probably it might be more expedient to place the veto with the Executive.

1963. You are quite of opinion that the Judge should have the appointment of the chief clerk?—I think it is of great importance.

1964. Considering the duties which the Vice-Chancellor would have to exercise, assuming the court to be armed with a power to sell land with an indefeasible title, in some shape or other, and having regard to the points upon which he must require the assistance of the chief clerk, from what class do you think the chief clerks ought to be selected?—I make no doubt, as regards Ireland, that they ought to be selected only from the Bar.

1965. That is from the practising Bar?—Yes, I mean the practising Bar.

1966. You are aware of course that a gentleman practising at the Chancery Bar

Bar in Ireland not alone becomes with acquainted Chancery business in all its details, but if he rise to eminence he must be a conveyancer and real property lawyer?—He must, certainly.

1967. Part 3 of this Bill constitutes a Court of Appeal; do you think it advisable that a new tribunal of appeal should be created in lieu of the present system, by which the appeal from the Master of the Rolls is from the Master of the Rolls to the Lord Chancellor?—I think it is very important to have an appeal tribunal, composed of two Judges, easily accessible.

1968. Do you see any objection to the contemplated plan of having the Lord Chancellor and an appeal Judge, either an ex-Chancellor, if you could get one, a common law Judge, if one could be found, or if not, a Lord Justice, as a Court of Appeal?—I think it very important to have one or the other; but there may be a great objection to appointing a common law Judge, for a common law Judge possibly may not have had experience of the practice in a court of equity, or be familiar with the numerous decisions almost daily reported. Again, he may have his own duties to perform in his own court, and I think it very important to have a person (for it is of great value to have a prompt and ready appeal) appointed who should not have other duties to perform that might interfere with him, but who might be in a condition to attend at any time.

1969. Though you would approve of having an ex-Chancellor if you could find one, as at present, in the absence of that, you would like to have a permanent Lord Justice?—I would say that it is a great deal better as in England; it would be more satisfactory to the public and the profession in Ireland.

1970. Can you form any estimate of the probable portion of the Chancellor's time, supposing him to be in the Appeal Court, that would be taken up in trying appeal business alone?—I have no idea. The appeals from the Masters are very few indeed.

1971. They may be large if you give appeals upon questions of real property?—Yes.

1972. It is an experiment?—It is an experiment.

1973. Supposing such an appellate court as is proposed either by this Bill or by the Bill of the honourable Member for Enniskillen to be created, with an appeal from the Judges of the Court of Chancery to it, the expense would be very little?—It ought to be very little. The Judges ought to provide for making the appeal very simple and inexpensive.

1974. There is hardly an opening for expense in such an appeal; it must necessarily be upon the same materials?—It must be necessarily upon the same materials. Perhaps it might be well to assimilate it in some way to the appeal from a Judge at Nisi Prius, having the counsel's certificate setting forth shortly the facts.

1975. According to the present system, you have an appeal from the Master of the Rolls to the Lord Chancellor, and I believe you are aware that upon that appeal there is no expense incurred beyond the expenses of the argument?—Yes, and the 10 *l.* deposit.

1976. That 10 *l.* deposit is paid in as a security against costs?—Yes; it remains in abeyance.

1977. There are no new briefs, and no new matter?—There ought to be none.

1978. Part 8 of this Bill refers to fees and stamps in the Court of Chancery; I believe I am right in saying that at present there are many heavy fees exacted upon almost every stage of the proceedings in Chancery?—There are very heavy fees required.

1979. If you have to make a search for any document, there is a fee for that search?—Yes, so it appears.

1980. If you want to get a copy of a document, you have to pay heavy fees for that copy?—Yes.

1981. In the proceedings in your office there is what is called a summons, which precedes any step taken in the cause?—Yes.

1982. What is the stamp on that summons?—Thirteen shillings and fourpence, I think.

1983. Almost in every stage of a Chancery cause at present, the business of the court and the administration of justice is impeded and its publicity affected by the existence of fees and stamps of a vexatious character?—It would be very important to have them removed.

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1984. Would you think it wise to arm the court, not with a power to abolish, but with a power either to abolish or reduce those fees which tend to impede the due publicity of your proceedings, or to affect the administration of justice?—They should be either abolished or very considerably reduced.

1985. Mr. *E. Ellice.*] You do not know what proportion those fees bear relatively to the fees on legal proceedings in England?—No, I have no idea; we do not tax the costs. There is a schedule of fees received by the officers.

1986. *Chairman.*] I believe they are principally taken now by the fees being converted into stamp duties?—Yes.

1987. Have you at all considered the propriety, supposing the Court of Chancery should be armed with this new jurisdiction of selling unincumbered estates, of exacting any per centage from the produce of such sales when brought into court, such, for instance, as taking one per cent., or a half per cent., or three quarters per cent., in lieu of the stamps?—No. The impression that estates would by this Bill be heavily taxed for the purpose of conducting the general litigation of the country by taking the money out of the funds of the owners, if there be a surplus, or out of the funds of the creditors, if there be a deficiency, has excited a very strong feeling. There is a very strong feeling that owners or creditors having charges upon real property would be thus made to pay in a great measure for all the expense of litigation in the Court of Chancery.

1988. Assume for a moment that that impression is totally incorrect, and that the intention is not to make owners or incumbrancers pay the expenses of litigation in the Court of Chancery, but that if parties come in to get an indefeasible title, the produce of the sale should be subject to a small per centage, such as that suggested by Dr. Longfield, of 3*d.* in the pound, in lieu of the stamp duties so abolished?—Yes, I think if parties come in to get an indefeasible title under what was an abnormal legislation, they would obtain it very cheaply indeed.

1989. You see an objection to one per cent.?—I do not, for my own part, provided you guard and take care of it in that way, and let the public understand that it is merely persons of that class who are to pay; but there is a very strong feeling in Ireland upon this particular matter.

1990. You do not at present act as Receiver Master?—No, except to this extent, that I passed accounts in the year 1855 to the number of 258. I have a statement here recording that "receivers' accounts passed in my office in the year 1855: accounts passed in causes and petition matters, 186; like in minor matters, 55; like in lunatic matters, 17; total accounts passed in the year 1855, 258."

1991. Over what period does that extend?—It embraces the whole year, from January 1855 to January 1856.

1992. And according to the existing practice, receivers should account once a year?—Yes; every 13 months.

1993. That will give the Committee pretty nearly an estimate of the number of the receivers acting over estates in your office?—Something between that and 300.

1994. How many are there for minors and lunatics?—There are 17 in lunatics, 55 in minor matters, and 186 in causes and petition matters.

1995. According to the present system, the necessity for a receiver arises very much from this, that an incumbrancer or person having a charge, who institutes a suit to raise his charge out of the estate by a sale, the sale is the last step in the cause?—Yes.

1996. And he wishes to catch the rents in the intervening period, to keep down the interest upon his incumbrance, and he appoints a receiver for that purpose; is not that so?—It is to a certain extent; but I never give a receiver at all; under the 15th section of the Chancery Regulation Act, where by any reasonable diligence parties can sell, I always put them to sell, unless there is something in the circumstances that renders it indispensable to have a receiver; but as a general rule, I never appoint a receiver where I can possibly avoid it; I should state that the appointment of receivers, under the 15th section of the Chancery Regulation Act, rests with the Master.

1997. As a general proposition, the necessity for the appointment of a receiver arises from this, that the sale of the estate is delayed to the termination of the cause?—As a general proposition, it is so; but, so far as I can see, a great number

number of receivers for some time past have been appointed solely because of the delays, unavoidable perhaps, in the Incumbered Estates Court. Parties present petitions for a receiver and an account, and say that it is of great importance to them to get not merely a receiver, but an account; for they are not likely, if a petition be presented in the Incumbered Estates Court, to have the funds distributed for two or three years. They invariably assure me of that, knowing that I have a very great objection to the appointment of receivers where we can sell ourselves. I always make inquiries; I find what the stage of proceeding in the Incumbered Estates Court has been, and how soon the sale is likely to take place, but the invariable statement is this: "We cannot get on at all; we lose the rents, and it is of great importance to us to have a receiver."

1998. The necessity for having a receiver arises from the postponement of the sale, or the delaying of it?—Yes.

1999. Supposing that a sale was to take place at the earliest stage of the proceedings, that is, at the first step in the cause, the petition presented would be an order of sale, and as soon as the title could be made out you sell; would not that obviate the necessity for the appointment of a receiver at all?—Certainly.

2000. Take first a case under the 15th section; at present you have to wind up the suit at the termination, and the termination is the same?—Yes.

2001. But if in place of that, at the very earliest stage, you were able to make an order for the sale of that estate, the necessity for the receiver would be very much diminished?—Yes; and therefore in any case where I saw that there must be a sale, I should direct an immediate sale, for instance, where there were trustees for the sale, where there were parties having a right to have the estate sold, and requiring it. I always, in the first instance, direct a sale in such a case as that, but in a mere incumbrancer's suit we have some delay; but in all cases, as soon as we could ascertain the necessity for it, it would be exceedingly important to have the sale as soon as possible. One of the great advantages of this would be to prevent the appointment of a receiver.

2002. Mr. *Whiteside.*] In the Receiver Bill there is power given to the court, by the 112th section, to order the sale of real estate, if required, at any time after the institution of the suit, as in England; do you approve of that power being given to the Court of Chancery in Ireland?—Yes, I do.

2003. That is to avoid the necessity of appointing a receiver?—Yes.

2004. You have been asked about the appointment of receivers; have you, during your experience as Master, considered the abuses incident to the present system of appointing receivers?—I have.

2005. What is your opinion as to that system, from your experience; are the abuses great and crying?—I think that the system is essentially defective and unwise. As to receivers, of course, if you must appoint a receiver, it rests with the Master, or the person to whom the power of appointing receivers is delegated, to see that you get a fit and proper person. I believe at present we take very great care (I know that I do myself, and I believe the other Masters do so likewise) to get a very proper receiver appointed. The present Receiver Master takes the greatest possible care in this respect.

2006. You have stated to the Committee, that in your office there are 258 receivers, or that you passed that number of accounts last year?—Yes.

2007. There are five Masters?—Yes.

2008. You are not a Receiver Master, properly so called?—I am not.

2009. How many receivers are there in the office of the Receiver Master, properly so called?—I have heard the number stated at about 1,100.

2010. Is the number in your office a fair average of the number of receivers in the other offices?—I should suppose so; varying perhaps, in some more, in some less; I should think there were about 250 or 330 in each office.

2011. Could you state to the Committee, that although the Receiver Master who is now working over these 1,100 receivers, may be perfectly competent to manage that number, it does not follow that he would be equally competent to manage a greater number?—The present Receiver Master has in addition to that duty, in rotation, the hearing of cause petitions, and all matters that may be referred generally to any Master; but if he were merely confined to receiving business, I think he could do the whole of that business.

2012. Has he been chiefly occupied in receiver business?—I do not know; that can be easily ascertained. I know that he has a good deal of other business to attend to.

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2013. Could you state to the Committee the expense of managing estates under receivers in the Court of Chancery; leaving out the cases of receivers under lunatics and minors, would 20 per cent. be an exaggeration, including all the cost of attorneys and accounts?—In some cases it would be a very great exaggeration; in others, where a great deal of expense and difficulty is occasioned, not merely by the impropriety of the receiver himself, but by the litigiousness of parties, it might reach as high as 10 per cent.

2014. Is it not much more?—In some cases it may be, but the average is from 10 to 15 per cent.; it is very expensive and very absurd.

2015. Did you ever read a valuable Report of a Committee, upon which the Right honourable Baronet the Member for Carlisle sat, for the improvement of the system of managing estates and receivers in the Court of Chancery?—I never read it.

2016. Did you read the Receiver Bill?—Yes.

2017. With reference to your acquaintance with the abuses of the system of receivers in the Court of Chancery, would that Bill be an improvement on the present system?—I think it would be a very great improvement; but if it professes to deal with the receiver system, and is a code of laws for the management of receivers, there are some important omissions in it.

2018. Did you observe in that Bill, that it professes to deal with matter of law and matter of practice, and that it is proposed not to allow a receiver to be appointed in any case in Ireland in which a receiver is not appointed in England?—I see no objection in that; I think it very desirable.

2019. Receivers are appointed much more commonly in Ireland than in England; you see no objection to an assimilation of the law in that respect?—I see no objection whatever.

2020. You have been asked about the finances of the Court of Chancery; do you agree with what was once stated by Lord St. Leonards, that there were only two men in Ireland who understood anything of that matter, namely, himself and Mr. Long?—I do not know anything about it myself.

2021. You could not undertake to expound to the Committee the condition in which the finances of the Court of Chancery are?—I know that the Chancellor has told me that there are many things that he would like to do, and legitimate objects of charity that he would like to satisfy, but the Suitors' Fee Fund has been from time to time nearly bankrupt; at one time the officers were not paid their quarterly salaries, and they were all thrown on the Consolidated Fund.

2022. If you reduce the fund out of which the stamps are now paid, or the fund which produces those charges which are in some respects oppressive, and pay the charges now upon them, you must meet that from some other source, and of course you mean by that the Consolidated Fund?—Yes.

2023. Do you not think that that raises a question of whether the fees and stamps in a court of justice should be maintained or not?—It does.

2024. Do you see any reason why there should be exceptional legislation in favour of the Court of Chancery in Ireland?—Not upon public grounds; but for the advantage of the court, and for the advantage of the suitors, I should be very glad indeed if many of the fees were abolished, and others very considerably reduced.

2025. Did you observe that that attempt has been made by me in the Schedule to the Procedure Bill?—I think it has, and you appear to have considered it very carefully.

2026. That is to reduce the expenses, and to adapt the fees to the system that we propose to form?—Yes.

2027. In reference to the practice of the court, you are aware that valuable reforms have been carried out in England?—Yes.

2028. Sir John Romilly's Act was in force in Ireland before the Court of Chancery in England was reformed?—Yes.

2029. And in consequence, we have his useful system as far as it extends, and the old system in cases to which his Act does not extend?—Yes.

2030. And the substance of your evidence is, that a short and cheap system should be applied to all cases alike?—Yes.

2031. Do you see any difficulty that you or the other gentlemen holding your offices would have in exercising the same jurisdiction in cases in which you cannot exercise a judicial power, as in cases under the 15th section of Sir John Romilly's Act, in which you do exercise that power?—I see no difficulty; many

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of the cases under the 15th section are equally, if not more important; we consider every case under the 15th section to be a great saving to the suitor.

2032. Have there been many successful appeals from your decision in cases where you were made by that Act judges in effect?—I believe very few from myself, or any of the other Masters. I can only speak particularly for myself during six years, and as regards myself, as far as I could ever learn, there have been only two successful appeals. I suppose there were not more than 10 or 12 in all, and two only were successful to any extent. In one of those I did not act upon a case that had been decided by the Court of Exchequer without argument. The Master of the Rolls expressed his very clear opinion that the decision at which I had arrived was right, but he did not like to overrule the other decision. In the other case he differed from me, but sent the case to a court of law, and directed the parties to try the action if they thought fit, and they never did so.

2033. And you have decided in that time many hundred cases?—Yes.

2034. One of the principles of the first Bill standing in my name is, that the Masters, being Vice-Chancellors in effect at this moment, according to the 15th section of Sir John Romilly's Act, it is proposed to make a certain number of Masters Vice-Chancellors really and in name in all cases?—So I see.

2035. Do you see any difficulty in the way of doing it?—No.

2036. You have been asked about the abolition of the Incumbered Estates Court, which is an important matter for the Committee to consider; do you believe, from your knowledge of the Court of Chancery, that it would be practicable, if the arrears of that court were transferred to your office at this moment, to transact the business of the country?—It would be quite impossible. I understand the statement of the Commissioners of the Incumbered Estates Court to be, that with all their staff, (and they have about 34 or 35,) it would take three years to wind up the arrears, and if that business was sent to the Court of Chancery, with the very small assistance which that court possesses, it would be utterly impossible to carry on the business at all.

2037. If the Committee should be of opinion that you should have a concurrent jurisdiction, or a power hereafter to sell by a short and cheap mode of selling, with a Parliamentary title, is there any difficulty in your exercising that power?—It appears to me that there is none whatever.

2038. Do you perceive that one of these Bills proposes to give that power directly to the Court of Chancery?—Yes.

2039. And as you sell under the old system, I presume that you would have no difficulty in selling under a better and cheaper system?—None whatever.

2040. With a reasonable addition to your staff, if future cases (I mean, of course, of the sale of incumbered estates) were given to any number of the Masters, do you think that you would be able to do the future business of the country?—It depends upon the number of officers given to us; I make no doubt that we should be able to do it very well with a proper staff.

2041. Whether you are called Vice-Chancellors or Masters, suppose you could have the power to sell which now belongs to the Incumbered Estates Court, with a Parliamentary title, and supposing that the Court of Chancery is itself reformed under either of the two measures before the Committee, would you, irrespective of any new appointment of Judges, be able at all to transact the accruing business of the country?—I think so, under a proper system.

2042. You are partly judicial at this moment, and partly ministerial?—We are partly judicial and partly ministerial.

2043. Of course a great number of these unpleasant restrictions are proposed to be abolished by both Bills?—Yes.

2044. You have no registrar at present to take down your orders?—No; we have no crier, or registrar, or any aid whatever, in court.

2045. And the chamber in which you sit, though open to the public, is a small court?—Yes, very small; we should require larger office accommodation. We feel even now that it is not at all large enough; and the records of the office are in a most disgraceful state; they are all in an underground cellar, where the tide comes in sometimes. We have not space in any way whatever for them. We have been remonstrating over and over again, and I have distinctly intimated that I could not be answerable for the custody of them.

2046. Is there not a Board of public works in Ireland?—Yes, but they have

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taken no notice of that matter, I presume, as additional buildings would be required.

2047. If you get the records of the Incumbered Estates Court, where will you put them?—We could not do it at all. In any of our offices there is not sufficient accommodation for keeping the records and receiver accounts.

2048. Mr. *Grogan.*] In the event of title-deeds being brought into the Masters' Office, where are they kept?—If they are recently brought in, and are required immediately, they are obliged to be kept in a small room about five feet by eight or ten, in which the examiner of the court discharges his duties, or else they have to go down to the cellar. The place is as dark as possible; you cannot get into it I understand without a lighted candle, and the old boxes are all mouldering and rotting away by degrees.

2049. You drew a distinction between the title-deeds of causes that have recently come into the office, and other title-deeds. Some title-deeds are required to be lodged for the security of the common parties; are not those which have recently come into the office, to which reference is required to be made, put down into those cellars ?—Yes, into those lower apartments.

2050. Is that small room fireproof?—No.

2051. Is there in fact any security for the safe return of documents brought into the office in the course of litigation?—There is no actual security. The officers are very careful of them as far as they possibly can be, but out of office hours there is no security whatever.

2052. Mr. *Macartney.*] In minor matters, has it not often been the case, in consequence of the inconvenience and the want of safety for deeds, that the deeds that ought to come into the charge of the Master are left by the mutual consent of the Master and the friends of the minor in the hands of a certain party; have you not given your sanction to that more than once?—I possibly may. If certain of the friends of the minor chose the deeds to be in any particular place, and as we have no place for their custody, I have assented to it; but moreover I may state, that I cannot receive any deeds in a minor matter or any other matter, (except under the 15th section of the Chancery Regulation Act,) unless under the order of the Chancellor or the Master of the Rolls.

2053. Mr. *Whiteside.*] Supposing that the Masters were all abolished, and also their existing staff, and that the Masters had their salaries for life, can you conceive, from your knowledge of the Court of Chancery, and what you have learnt of the state of the Incumbered Estates Court, of one gentleman or two gentlemen transacting all the business of the Court of Chancery, the accruing business of the Court, the business of the Incumbered Estates Court, the arrears of the Incumbered Estates Court, and the sales of unincumbered property in Ireland besides?—No; it is quite out of the question.

2054. With regard to the sale of unincumbered property, does it strike you that the sale of unincumbered property, where there are no litigants and no question in controversy, would impose upon the Judge a great responsibility, and lay the Court open to the suffering of frauds to be committed upon remainder-men and others?—Certainly, as in all *ex parte* cases. Every conscientious Master or Judge will bestow double care upon those cases; in fact, he will make them his own.

2055. Supposing, however, that the Committee were of opinion that it was well to give that power for the sale of unincumbered estates with a Parliamentary title, through the medium of the Court of Chancery, what would you then suggest should be done to carry out that object?—What occurs to me is this; you will find it much the best arrangement, and I think it is the only way, to have two Title Masters; let the Judge who has the conduct of the cause direct the property to be sold; let the whole title be investigated and the rental settled, and the sales effected by one of those Title Masters. At the same time let the Court, as it is perfectly competent to it to do, ascertain the incumbrances (which I consider of importance, in order to prevent delay) affecting the estates; then settle the schedule of incumbrances provisionally; and when the title is made out, compare that schedule of incumbrances with the abstract of title, settle it then finally, and in a week after the sale takes place, and the purchase-money is lodged, you will by that co-operative and concurrent jurisdiction be in a condition to pay the parties, instead of producing what is now, I understand, a very great grievance, the delay in paying out the money long after the sales have been effected and the purchase-money lodged.

2056. If that principle were introduced of selling unincumbered property, you would recommend that there should be two persons exclusively devoted to the investigation of titles?—Certainly, exclusively devoted to the investigation of titles; and I have no doubt in the world that that is the only way in which it could be effected at all. Being in communication with the court, they could have full power of investigating everything. One branch of the court would assist the other, and the court would be able to pay the parties interested as soon as the sale was effected.

2057. If it were decided to transfer the arrears to the Court of Chancery, and to give a title to unincumbered property, it could only be done by the establishment of such a system as you now suggest?—Yes; and it would be much more satisfactory than transferring it to conveyancing counsel. The title Commissioners would investigate the title, and sell under the sanction of the court, and probably it might be necessary to have a sanction and control exercised to a certain extent, and you would then have the whole thing under the control of a high Judge, such as the Chancellor, Master of the Rolls, or one of the Vice-Chancellors. You would have the work of the title and sale done by the Title Commissioners; you would have the one branch assisting the other; and you would make it a cheap, harmonious, and useful system, and the parties would be paid their money as soon as the purchase was effected.

2058. You cannot draw a cheque at present, although you direct the sale?—We cannot.

2059. Sir *J. Graham.*] There are now five Masters in Ireland, are there not?—There are.

2060. A question has been put to you with reference to extending their jurisdiction, and making them *quasi* Vice-Chancellors; would not that, in point of fact, create five Vice-Chancellors?—No, I think it would not go to that extent; it would at present create five *quasi* Vice-Chancellors; in which case I think it would be wrong to appoint anything like an actual Vice-Chancellor; and most probably also after some of the existing Masters resigned, or went off in the course of nature, to have fresh Masters appointed in their place. You could then see the working of this plan, and the number necessary to be maintained.

2061. You have talked of Title Commissioners or Title Masters; would they be in addition to the five existing Masters, according to your view?—No, I would not have them in addition to the five existing Masters. The plan that I would contemplate is this: let there be two Vice-Chancellors. If you were to transfer the arrears of the Incumbered Estates Court to the Court of Chancery at present, I doubt whether even two Title Masters, with the Vice-Chancellors, would be sufficient; but if you do not extend the present arrears in the Incumbered Estates Court to the Court of Chancery, it is perfectly plain that you will have no difficulty whatever in this way. Let there be two Vice-Chancellors; let the present Masters retire when they have wound up their business, as in England. You would have the two Title Masters then, and the whole business could be done satisfactorily.

2062. The transfer of the investigation of the title from the Judge ordering the sale to another person assisting him, is the reverse of the policy of the Incumbered Estates Act, is it not? There the Judge ordering the sale is the person who himself investigates the title?—It is so. I make no doubt that he is the person who investigates the title, and who allocates the incumbrances; he does the whole business from the beginning to the end, and that is what has caused the delay, and has blocked up the court, and created embarrassment.

2063. I thought you spoke with commendation of the amended system in England, where the Judge, from the commencement of the suit to its close, himself superintends the whole conduct of the case, and is responsible for it?—Yes.

2064. Would not that be inconsistent with the transfer of that most important duty, of examining the title?—No; and for this reason, that the title business is, in point of fact, now done in England by the standing staff, the conveyancing counsel; and you have those gentlemen, who are not to the same extent responsible, or who have not the same means of discharging that important duty properly (of course they cannot do so with their other avocations); you have them as a hanging staff upon the Court.

2065. You are now speaking of the practice in England, with a roster of conveyancers?—Yes.

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2066. That is different from the Incumbered Estates Court where the title is investigated by the Judge; in England he refers to the roster of counsel the investigation of the title. In an earlier part of your evidence, you stated that you did investigate the title, whatever the practice might be in other offices, and that you were unwilling to delegate to others that investigation?—Certainly; I did not think it right to delegate it to others; I had the business to do and could do it; but this question must be considered with regard to the staff that you have to work, and that you can expect to do all the business of the court with. With the amount of business that I have to do in my office, I can examine such of the titles as come in before me in that particular way; as I stated before, they are very few; but if I had a great number of titles to investigate, I could not possibly discharge my duty in that respect, and also my duty with respect to the general business of the office.

2067. If the power of selling unincumbered estates were given to the Court of Chancery, and through the Court of Chancery to the Vice-Chancellors, and you being of opinion that the danger of fraud with regard to unincumbered estates (parties not being so much on the alert) would be greater, could you, satisfactorily to yourself, order the sale of an unincumbered estate, the title of which you had not investigated, but in which order you had acted upon the report of a Title Commissioner?—In such case I would consider myself bound to examine it strictly, even after his report. I was speaking of incumbered estates; but as to ordering a sale finally of an unincumbered estate, it might require a different consideration. I consider then, that instead of the Vice-Chancellor looking at the case in the first instance himself, he should direct the title to be examined, and to be investigated by the Title Commissioner; upon the return of that title, seeing how the matter stood, who were the parties, &c., he would have thrown on himself a much greater responsibility than in another case. I there consider that you should have the joint investigation, the thorough sifting and investigation of the title by the Title Commissioner and of the Judge who, in that particular instance, would be obliged most vigilantly to apply his attention and consideration to the matter, and, if necessary, to communicate with the Title Commissioner.

2068. What would be your view of the mode in which those Title Masters ought to perform their functions; would their duty be confined to examining the documents, or would you allow them to call evidence?—I would allow them to call evidence. They should be allowed to do everything that was necessary in the investigation of the title. In the case of there being a reference (as there is in the case of objections to title), to one of the present Masters, if any of these objections involve matters of fact, the present Masters will, either by affidavit, or by parol evidence, or otherwise, inquire fully into that matter; and I would let the Title Commissioners do exactly the same thing.

2069. Much of the expense and delay in Chancery, in England, has been ascribed to the mode of reference to the Master, the report, the judicial functions exercised by the Master, and the very course of procedure which, as I understand it, you would, with reference to title, reintroduce after the amendment of the Court of Chancery in Ireland with reference to sale?—I would do it, certainly, as a choice of evils, because you could get no judicial staff at all within reasonable bounds sufficient to discharge the general duties and functions which the Judges of the Court of Chancery would have to do under this Act, and also apply themselves to the diligent and due investigation of titles; they must delegate it to some person, more or less. Every Judge knows, in practice, how impossible it would be for him, amidst all his other avocations, to sit down and deliberately, day and night, to investigate titles. In England the practice, as announced in the Act of Parliament, is this: we do not investigate these titles ourselves; we are obliged, in order to have a due investigation of title, to employ persons who are scarcely to be called public officers; there is a roster of conveyancers. In England, even where the principle was established, that it was necessary for the Judge to have everything done under his own supervision, that difficulty was felt, and in that particular case was provided for by having an investigation of title take place otherwise than by the Judge himself. In the English Act for the purpose of investigation of title it is stated, in the 15 & 16 Vict. c. 86, s. 56, "Before any estate or interest shall be put up for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved

approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof; and when an estate or interest shall be so put up for sale, a time for the delivery of the abstract of title thereto to the purchaser or his solicitor shall be specified in the said conditions of sale." That says nothing about the Judges themselves investigating the title at all. It was found in England that this was a special duty and a special class of business, involving extreme care and due deliberation, and that it would not be compatible with the due discharge of the other duties of a high Judge that he should devote his time to it. Accordingly as a substitute, be it a good one or not, for that personal investigation, in England (though the principle was clearly affirmed that the Judge should do the whole himself), it was found indispensable in that particular class of business to confide it to others. It is to be specially observed that the Act does not seem to contemplate that there is to be a subsequent thorough investigation by the Court, or that the Judge is required to do more than to direct conditions and other matters connected with the sale. That is what I propose to adopt in Ireland.

2070. Eighteen millions' worth of land has been sold in Ireland in the Incumbered Estates Court?—So I have heard.

2071. The Committee have been told, by two of the three Judges, that the title to the whole of that land so sold has been investigated by those three men?—So I understood.

2072. Is there not, on the whole, satisfaction in Ireland with the mode in which those arduous duties have been performed in the sale of incumbered property?—Upon the whole, there is at present. Various parties have objected from time to time, and various difficulties and some mistakes have been found out, but at present, I am bound to say, it has given the greatest satisfaction.

2073. Will you explain to the Committee how, so large an amount of incumbered property having been sold, it should now be necessary to have in the Receiver's office 1,100 receivers; it would not appear, at first sight, how the incumbrances of Ireland had been relieved by the sale of 18 millions' worth of property if in one Master's office there are still 1,100 receivers in full operation?—It appears to me that that is attributable to a variety of causes. The facility, first, of giving receivers under the Court of Chancery, which I consider was a very grievous mistake in Ireland; then its being a remedy by statute for almost everything, such as the tithe rentcharge, annuities, mortgages, &c. The Master of the Rolls has repeatedly said, over and over again, "It is lamentable that I am obliged to give a receiver in a case of this kind." Again, the Judgment Act gives the parties receivers in every case; and it has been a favourite but a mischievous remedy in Ireland to give a receiver for everything. If there be an order of the Court directing us to appoint a receiver, however much we regret it, we are obliged to appoint a receiver. But the first thing that ought to be done after any new legislation upon the subject connected with Ireland is, a thorough and deliberate investigation of all those cases in which receivers exist, and their discharge where it may be unnecessary or useless to continue them. I have been instrumental in getting numbers of old receivers discharged. Wherever I find that parties are keeping a receiver before the court merely for their own convenience, I always certify to the Master of the Rolls that the receiver should be discharged. Numbers of those receivers are over small properties that never will or can pay anything to the parties. I think it right to mention here that one great defect exists at present, viz. the want of an accurate rental enforced and prepared before the appointment of a receiver. This was one of the things that I wanted to suggest to the Honourable Member for Enniskillen. Before a receiver is appointed at all by the Court, there should, in all cases, be a rental by all means duly settled and duly investigated; you will be able then to see whether a receiver ought to be appointed or not. It ought to be the duty of the person having the carriage of the proceedings to have this rental settled; whereas now, when the receiver is sometimes in operation for four or five years, and a difficulty arises, the receiver tells you that he does not know whether the man holds by lease or not, but that he has been paying the rent. The whole rental ought to be put into the hand of the receiver, and means to do so provided by compelling the tenants to produce their leases. The Master has no power to do that now. The next step, when that rental is settled,

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so far as it can be, would be, that there should be an order upon the tenants to pay their rents; and that order, instead of being, as now, a blind order, without specifying what the rent or the tenure or arrears are, should contain upon the back of it, according to the settled rental, the arrear that was returned due, and the nature of the tenancy; and if the tenant did not come in and dispute it within a certain time, or show some just cause, he should be bound by it. The order should require tenants served with it should present any objections to the receiver within a certain time; say within two or three months. The receiver shall then fully inquire into them. He should also ascertain himself what is the case with respect to any tenancies about which the terms were not particularly ascertained, and get all the information upon them; and he should then, at the end of three or four, or five or six months, bring in a general report upon the whole condition of the estate, showing, as far as he can, its position, its capabilities, its requirements, any variance from the previous rental, and disputed tenancies and arrears, and suggest what would be right and proper to be done; and then, upon seeing a well-considered statement of the whole condition of the estate, and a general report, the Master in the first instance would be able to judge of the capabilities of the receiver, or of his proper diligence, and then, without a statement of facts, without the receiver applying at every time to bring ejectment or other proceedings against this or that person, you could give general directions for the management of the estate and mode of dealing with the tenants in the various emergencies likely to arise.

2074. Mr. *Whiteside.*] Do you approve of a receiver not being appointed unless the property exceeds 200*l.* a year?—Yes.

2075. Would that not remove a great number of small cases?—Yes.

2076. Do you observe that by clause 37, power is given to the receiver, which he has not now, in the case of arrears of rent, to allow of sums for keeping the premises in repair?—Yes; I approve of that.

2077. Do you approve of power to let lands for a fixed term, not exceeding 21 years?—Yes; I think it is a power which, if cautiously exercised, may be very right.

2078. Is not the present system of letting lands pending the cause a mischievous system?—It is.

2079. He has no certainty of tenure; when the cause is over his tenancy ceases?—Yes. I think it is very well to give a power in cases of that kind, but it would be a very hard thing to make a general rule applicable to all cases.

2080. Sir *J. Graham.*] I think subsequently to the inquiry into the system of judgments in Ireland, and the appointment of receivers, some legislation has taken place?—There is some legislation, which will probably inflict an immense injury upon Ireland, which is the legislation of allowing every judgment creditor with a judgment of 20*l.* or 30*l.* to convert it into a mortgage, nowtithstanding the prior Act of Parliament, which said that no judgment creditor whose judgment did not amount to 150*l.* should be able to get a receiver. By this subsequent legislation a man may have a judgment for 10*l.* and convert it into a mortgage; and I have often seen those cases. A country attorney has a demand of 10*l.* against his client; he brings an action, it is converted into a judgment. He registers that as a mortgage; he files a petition at once for the purpose of getting a receiver, and sale as mortgagee. I am sorry to say I have seen such cases.

2081. The limitation of 150*l.* followed immediately upon the inquiry, did not it?—Yes.

2082. When did the contravention of that salutary limitation take place?—About a year and a half afterwards.

2083. What was rightly done has been since undone in the wrong direction?—Yes, it has been undone in the wrong direction, and we all feel that it is most mischievous. And with respect to that Act of Parliament, every judgment is converted into a mortgage, and you have the whole estate and interest of the persons thus vested in the judgment creditor.

2084. All that has been done with regard to the sale of incumbered estates will be ineffectual for good, unless the Legislature proceeds to the root of the evil, with respect to judgments, and the facility of making judgments real charges, and, consequent upon real charges, the appointment of receivers?—That is my decided opinion.

2085. Mr. *Whiteside.*] The Committee upon which the Right honourable Baronet

Baronet the Member for Carlisle sat, recommended the limitation as to the sum, namely, that no receiver should be appointed where there was a less debt than 150 *l.* Is not it equally necessary to have a limitation as to the amount of the property over which the receiver is to be appointed as a limitation with regard to the amount of the debt?—Decidedly, because, unless you render the system very inexpensive and self-working, there is no use, except for a solicitor, in having a receiver of property over 100 *l.* a year; the people never get anything.

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2086. *Chairman.*] I believe the alteration of the law which you condemn is under the last Act of 1849 or 1850?—Yes.

2087. The alteration was this, that whilst previously to that Act every judgment when once recovered was a charge *ipso facto* upon all the lands, the judgment debtor then had or might thereafter acquire, and there the judgment ceases, now, having recovered the judgment, if you can discover that your debtor has any particular lands, you may register in the affidavit the name of the lands, and that becomes a mortgage?—Yes, that is the alteration.

2088. In what respect do you disapprove of that?—I disapprove of it, because it has given a facility for all those small judgments, and has interfered with that wise legislation as to limiting the amount for which receivers should be obtained over estates, and it has given a power, which has been abused, of converting every small wretched decree into a mortgage.

2089. As far as I can judge, the alteration that you condemn most, is taking away that power which limits the right of a party whose debt is 150 *l.* to have a receiver?—Yes.

2090. In what way would you deal with a real estate subject to a judgment, or in what way should a small debtor put in his charge against real estates?—Let him enter into possession; let him have execution; give him the power of issuing his execution against the freehold estate; I would take away that doctrine of elegit against only one-half; let him issue his execution against the estate, and go into possession.

2091. Sir *J. Graham.*] The first remedy applied immediately after the inquiry of that Committee, was the remedy which Lord St. Leonards and the present Master of the Rolls in Ireland concurred in recommending?—I believe it was.

2092. That remedy took away the elegit, did it not?—Yes, that did away with the elegit.

2093. Are you not much the junior Master of the five Masters now in Ireland?—I am happy to say that in respect of age I happen to be the junior Master; but there is very little difference between Master Brooke and myself in the date of our appointment as Masters. Master Brooke was made a Master about three or four months before I was.

2094. You are considerably the junior at the Bar?—Yes, I am. Master Brooke was called to the Bar in 1817, and I was called in Hilary Term in 1828.

2095. Mr. *Whiteside.*] You were asked about the opinions given upon conveyances; do not the present Commissioners for the sale of incumbered estates get the opinion of counsel upon titles; have they not a counsel each?—In practice, I believe, they do get the opinion of counsel; I do not know that they have any standing counsel, but I believe, by the operation of circumstances, gentlemen have become standing counsel.

2096. Sir *J. Graham.*] The immediate assistant which each Master now has is the examiner, is he not?—Yes, and the assistant clerk.

2097. The functions of the examiner, as now exercised in the Master's Office, are very different from those that you would contemplate being exercised by the first clerk of the Vice-Chancellor?—Very different indeed; that is, the first chief clerk of the Vice-Chancellor would have some part of the duty to do, but he would have a great deal more to do, involving and requiring a great amount of legal knowledge.

2098. If the Masters in Ireland were converted into Vice-Chancellors, their staff must be both increased and recast?—I think, with regard to the staff, the examiners would make very excellent second chief clerks, and also act as registers; and I believe you propose to give salaries to the second chief clerks approaching to something like the amount which is given to the examiners. Although the examiners very ably perform their duties, I am bound to say that they are not, according to my notion, the class of officials who should be appointed as first chief clerks.

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2099. You would require the assistance, following the example of England, of either barristers or solicitors of experience, and some standing as chief clerks?—Yes.

2100. And your view would be, that in addition to two Vice-Chancellors, there should be two Title Masters or Commissioners, as you term them, and the whole duty prospectively of the sale of incumbered estates certainly, unincumbered possibly, should henceforth be under the direction of those two Vice-Chancellors, with the assistance of the Title Commissioners?—It appears so to me.

2101. And the present arrears in the Incumbered Estates Court should be wound up by the present Judges?—I think that the present arrears should be wound up by the present Judges.

2102. That is, on the whole, the recommendation you would give?—Yes.

2103. You would specially call the attention of the Committee to the law regulating judgments and receivers in Ireland, in addition to what you now state?—Yes.

2104. Mr. *Whiteside.*] I did not understand that you recommended these Title Commissioners, unless the Committee undertook to convey unincumbered estates through the medium of the Court of Chancery?—In any case, it appears to me, that if you appoint two Vice-Chancellors you must have Title Commissioners for the incumbered estates.

2105. Mr. *E. Ellice.*] The chief clerk to a Vice-Chancellor would have nearly the whole of the administrative duties of the office of Vice-Chancellor?—A very large portion of them.

2106. As separated from the judicial duties which would fall chiefly upon the Vice-Chancellor?—Yes.

2107. Mr. *Grogan.*] The Right honourable Baronet the Member for Carlisle put a question to you relative to the satisfaction that the public manifested in the working of the Incumbered Estates Court, and, if I recollect correctly, your answer was, that at present it gave very general satisfaction?—Yes.

2108. Do you put any particular stress upon the words "at present," or had your answer reference to any particular idea present to your mind?—As constituted at present, it has given very general satisfaction; but I doubt whether, when matters come to be inquired into a little later, that satisfaction will continue. I have seen some matters that have come before myself, that certainly are not very satisfactory.

2109. *Chairman.*] In what respect have they been unsatisfactory?—In this respect, the selling of the estates of minors whose estates were under the court.

2110. That is minors' estates where the estates are subject to incumbrances?—Minors' estates where they are selling another person's estate, and seeking in selling that minor's estate, to sell other person's estates, including the minor's estates.

2111. Do you mean a case where a minor's estate is not at all subject to a charge?—Yes.

2112. You mean instances in which mistakes have been made in which the Incumbered Estates Court has, to use the language of the Master of the Rolls, upon a petition for the sale of the estate of A., sold the estate of B.?—Yes.

2113. Can you mention to the Committee any instances in which a mistake of that character has taken place?—I have heard of other cases. I can mention two within my own knowledge. One of them was the case of Nolan's Minors: there were 527 acres of mountain land that had been in the possession of the minor's family for upwards of a century, and had been, during that time, the subject of settlements in the family, and had been for several years under the Court of Chancery, in the matter of Nolan's Minors, with a receiver over it; it was included in the title, and was directed to be sold; it was, in point of fact, put up for sale, and sold inchoately as part of the Martin estate. The solicitor interested for the family happened to be in the country, and was greatly alarmed, and came up to town, and communicated with me on the subject. I inquired into the facts, and I found that this estate had belonged to the minor's family beyond all manner of doubt, and had been in the possession of the family for upwards of 100 years. The matter was very pressing, and in that case there was an order of reference to me, obtained from the Lord Chancellor, which order bears date the 24th of February 1854. I inquired into the matter, and was necessarily very prompt; we were obliged to take the proceedings, in order to bring in ejectment at the next assizes; and I find that the Lord Chancellor's order

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was made upon petition on the 24th of February 1854, and my report was signed and filed on the 25th of February. The matter being very pressing, I required no statement of facts. I swore the solicitor, Mr. Galway, to the facts, and I see the schedule of evidence here: "Constat of Patent, 5th January, 18th Charles the Second, A.D. 1666. Extract from book of survey and distribution. Settlement of 12th day of August 1789. Will of Francis French, dated 25th May 1833. Settlement of 1st September 1836, &c." It appeared to me perfectly plain that this estate was not at all part of the Martin estate. It is open, however, to this observation, that one was at the Doolater East, and the other at Doolater West; and accordingly I directed the ejectment to be brought. The ejectment was brought, and was taken down to the assizes; and upon consideration afterwards, the party against whom we brought the ejectment, who was purchaser under the Incumbered Estates Court, submitted and paid the costs.

2114. I think that is the case to which Mr. Hargreave alluded, where they imposed an obligation upon the purchaser that he should not rest upon the title of the conveyance of the Incumbered Estates Court?—I am not aware of anything of that kind, because, before the matter was completed, as I understand, in the Incumbered Estates Court, the conveyance was stayed; and the conveyance being stayed, as well as I could learn the facts, this ejectment was brought.

2115. Mr. *Grogan.*] The property in question was put up for sale by public auction, and but for your proceedings, possession would have followed?—Yes.

2116. *Chairman.*] Before it came into your court at all, a controversy as to this townland had arisen in the Incumbered Estates Court, and either the conveyance was stayed or a condition was put upon the purchaser that he should not rest upon the conveyance?—I am inclined to think that no condition was put upon the purchaser; for if I am to mind the representation of the solicitor, who is a very respectable man, he said that the case was so very pressing, that the Commissioner insisted upon selling it, and put him upon such very stringent terms, and I see that in order to meet the exigency of the Commissioner's order, I directed the solicitor to present a petition. That order was obtained upon the 24th of February, and before 12 o'clock on the 25th the report was made and confirmed, and the ejectment brought.

2117. The controversy had arisen before it came to you in the Incumbered Estates Court, and something was done to prevent the effect of the conveyance; for if the conveyance was executed, it would be good for nothing?—I think it was stayed.

2118. This proceeding was with a view to put the dispute between the parties as to the owner of the townland in course of trial?—The Incumbered Estates Commissioners appear by this order to have decided that they should sell the estate, and accordingly they would have completed the matter, but they gave permission by this order either to bring an ejectment or to appeal; therefore the matter came before me in that shape. I directed the ejectment to be brought at once. The ejectment went down, and the briefs were given out.

2119. Mr. *H. Herbert.*] What was the value of that property?—I do not know what the value of it was; the rent paid for it now is 10 *l.* or 12 *l.* a year.

2120. *Chairman.*] Before this case came into your office the mistake had been discovered?—Yes; but not by the Commissioner, but by the family solicitor.

2121. It had been brought under the attention of the Incumbered Estates Court?—It had.

2122. The seller there alleged that this townland was a thing subject to this incumbrance, and might be sold?—Yes.

2123. The family of the minor represented the contrary?—Yes.

2124. It was brought into your office, inasmuch as no proceeding could be taken upon behalf of the minors without your sanction?—Yes.

2125. Was it anything more than a case in which it was asserted on the one side that a particular townland formed a part of a particular estate, and upon the other side that was denied?—Yes; but it appeared to me to be on the title-deeds plain as light.

2126. Mr. *Grogan.*] Notwithstanding the disputed point of property which appears to have arisen before the Incumbered Estates Court, they ordered the sale, and actually sold the disputed land?—Yes, they have sold it.

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2127. *Chairman.*] Was the supposed error discovered before the sale, or not?—I am inclined to think that it was discovered after the sale.

2128. You mentioned some other case; what case was it to which you referred?—The other case was the case of Cheevers and Browne; the estate was sold under an indemnity deed; it contained 700 acres; and the question was, whether it was in that indemnity deed or not. The parties got an order of reference; the three Commissioners decided that it was in that indemnity deed, and that Cheevers, who was the petitioner in the case, had a right to sell it. Upon looking into the matter, I was perfectly satisfied that it was not in the indemnity deed, and I directed them to apply to the Commissioners, and that if the Commissioners decided against them, as they did, there should be an appeal to the Privy Council. There was an appeal to the Privy Council. I was so satisfied about it myself that I gave that direction, that in the first instance the question should be brought upon the part of the minors before the Commissioners, and in the event of the Commissioners deciding against it, without further order the parties acting for the minors should present an appeal to the Privy Council. The case came on before the Privy Council, and the Privy Council decided unanimously that that estate was not at all included.

2129. Sir *E. Perry.*] Is that anything more than saying that the Commissioners might decide wrongly upon a point of law?—This was a question upon the construction of a deed.

2130. Is not that a point of law?—Yes.

2131. *Chairman.*] And supposing there had been an appeal to the House of Lords from the Privy Council, the House of Lords might have come to the conclusion that neither decision was right?—It might be so.

2132. Mr. *Grogan.*] With regard to the alterations in the Court of Chancery to which your attention has been called, the opening before the Chancellor, the reference to yourself, and the reference back to the Court of Chancery, could you say what length of time would be the duration of an ordinary cause before you?—It depends upon this altogether; in the majority of causes which are in anyway complicated we have to take the accounts in the Court of Chancery, which are not taken in the Incumbered Estates Court. In the Incumbered Estates Court they disregard the primary liability of personal estate; they sell at once upon the charge all the real estate, and in the emergent circumstances of the country it was, perhaps, perfectly right to give them that jurisdiction; but in the proceedings under the Court of Chancery we are obliged to marshal the estate. We first see whether the personal estate is primarily liable; if the personal estate is primarily liable, and if there be personal estate sufficient, we deal with it; but if it be not primarily liable, then you have a sale at once; so that it is very hard to say, provided you restore, as I think you should restore, the ancient condition of the law, now that a great emergency has ceased, what would be the ordinary duration of a cause. If there is no account of the personal estate to be taken; if it be a fair case of selling an estate in the Court of Chancery, under this improved jurisdiction, I should say that in an ordinary case there ought to be no difficulty, not merely in selling within six months, but there ought to be no difficulty in distributing the purchase-money within one fortnight after; because in the Court of Chancery we would take an account of incumbrances, either prior to, or concurrently with, making out the title, which I think very expedient.

2133. Sir *E. Perry.*] With regard to that portion of the Bill which relates to the reform of the Court of Chancery, irrespective of the Incumbered Estates Court, I gather from your evidence that you look upon uniformity of practice between this country and Ireland as of great importance?—Yes.

2134. Would you carry that to the extent of abrogating that portion of the practice of Ireland which is superior to the practice of England?—I certainly think there is a great advantage in assimilating the practice of the two countries.

2135. Will you be good enough to give a direct answer to the question, whether you would abrogate that portion of the practice of Ireland which is superior to the practice of England?—No, I would not; I think some two or three things are very good in Ireland. The English system of separate claims, and separate discussion upon each claim, appears to me objectionable. It appears to me that the Incumbered Estates Courts' practice should be adopted in the Court of Chancery, and that the schedule should be brought in at once, and the

the parties should have notice of the schedule, to see whether they are properly upon it or not, instead of bringing in individual claims.

2136. You would not abrogate practice in Ireland that is superior to that of England, for the purpose of getting uniformity of procedure?—Assuming that it was superior, of course you ought not, if you can, to get a superior practice.

2137. The procedure in England is in a state of transition; we are altering the old system, and endeavouring to introduce new and better forms?—I am not familiar with that subject.

2138. Your knowledge of English changes is dependent upon hearsay?—Yes, and upon the orders that have been made from time to time which I have seen, and various publications.

2139. On introducing a new system of reform into Ireland, would you copy what has been done in England for the sake of uniformity, or would you profit by the experience which is gained here, and introduce something better than has been done in England?—It appears to me that the profession are at sea, and the public are quite at sea about the practice; they have no guide; they have no rule or decisions.

2140. Is it not better to introduce an improvement upon the procedure of England, if any such improvement suggests itself, or would you imitate exactly what has taken place in this country?—There can be no doubt that in the act of the common legislature in any Act of Parliament it would be quite right to introduce the most improved system that possibly could be; but at the same time, I think you should have as much regard as possible to the existing practice in England, and that it should be plain and obvious that it was a decided practical improvement before you sought to vary it.

2141. Was that an improvement in England paying off all the Masters in the Court of Chancery who were young men in the prime of life, on full salaries, when other important duties were performed by them in court?—No; I think not. I think that the public has a right to the service of every one who is capable of performing his duty; and I think that it would be more satisfactory to every honourable mind to perform his duty, when he was capable of doing it.

2142. Under the 15th section of Sir John Romilly's Act, I observe that a very large class of judicial cases are referred to the Masters?—Very large; every incumbrancer's suit, in fact.

2143. And I also observe by the evidence of the Masters, that there are no arrears, with a very small exception, before the respective Masters?—Not of business set down; I seldom have an arrear.

2144. I see Master Henn says there is an arrear of business, but not to a very considerable amount in his office; Master Litton says, "As to short causes, there never is or has been a single case in arrear. As to long causes, I have never had a single case in arrear at the commencement of each term"?—Master Litton should be taken with this qualification, as stated by himself. He has a different practice from that of the other Masters. We consider that we have an arrear unless we dispose of every matter that is entered two clear days before. Master Litton has introduced the practice into his office of having term lists like the Chancellor, and therefore every case that is set down after the second day of term, must go into the next term list.

2145. Does not Master Litton say, "During the 12 years I have been a Master I have never had a single case in arrear at the commencement of each term"?—That is with reference to that practice which he has established. I may state that nobody works more laboriously than Master Litton, or more usefully.

2146. Master Brooke states, "I have answered already that there is not any arrear," and you yourself state that there is not sufficient business to occupy your time?—Generally speaking there has not been sufficient business to occupy my time hitherto.

2147. Master Lyle says, "There is no delay at present occasioned in the prosecution of cases by the pressure of business in my office"?—Yes.

2148. It therefore clearly appears that the four Masters are able to despatch their business to the great benefit of the public and the profession?—Yes, I believe so.

2149. Do you not consider therefore that those functions attributed to the Masters under the 15th section are considerably better to the public, than that

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clause in the English Act which pays off the Masters upon full salary, and gives them nothing to do?—Yes, very much better,

2150. Under the 15th section a great deal of superfluous business is created by the necessity of the Chancellor referring the matter to the Master?—Yes.

2151. The consequence of that is, that the Master is an administrative officer; there is to be a report to the Chancellor upon each decision?—No; under the 15th section there is not a report to the Chancellor at all. The Chancellor merely declares that the case comes within the 15th section; he then makes an order, referring it to the Master to proceed in the matter according to the 15th section. The Chancellor then has nothing more to do with it, except in the case of the other branch of the Court in distributing the funds. We have no power of distributing the funds, nor of directing service out of on amendments, the revival of proceedings, or supplemental proceedings, when necessary. In all those cases our functions are curtailed by the necessity of going to the court to get those which appear to be formal matters carried into effect.

2152. Would not all those objections be obviated by a clause enacting that petitions in these matters: administration suits, foreclosure suits, appointing trustees, partnership accounts, and such other matters as the petitioner should wish to have set down before the Master, should be set down before the Master in Ordinary, and that the jurisdiction of the Master of the Rolls should be conferred upon the Master in Ordinary?—Yes; a clause of that kind would entirely obviate all that difficulty, so far as proceedings under the 15th section go.

2153. And such a clause would constitute the Masters Vice-Chancellors in all those causes now allocated to them by the Lord Chancellor?—Yes.

2154. And you think that that would be a much more beneficial and economical reform than the Chancery Reform Act of this country, which pays off the Masters on full salary without giving them anything to do?—Yes, that is unquestionably my own opinion. I think if you use the existing staff of the court, and give them enlarged powers where they are requisite, and the additional assistance of a register, it would be a great saving. The course of proceeding now in the Master's office really is one sitting as in open court; we mark every document ourselves, and the summonses on the back of it; we have to call the cases, and note down everything that is done, from the beginning to the end; besides being Judges to decide, we have to mark every document, to take down the evidence of every witness, and frequently, in consequence of the counsel preferring to go elsewhere, for the prestige of the thing, we have to take up the cross-examination of the witnesses, which is a very heavy business. Sometimes I have had three days of a *vivâ voce* examination of witnesses, having formed my judgment, and conducted the whole case from the beginning to the end, so far as the assistance of a court official would be required, single handed and unaided. I most conscientiously say that if the system were altered, I do not consider that any large expense would be requisite for the purpose.

2155. That short clause would confer an immense benefit upon the profession and the public of Ireland with very little expense to the public?—That is my own opinion.

2156. Mr. *Kirk*.] The Committee have it in evidence that if the Incumbered Estates Court was abolished, and if there was a court of appeal created, different from that which now exists in that court, and two Vice-Chancellors were appointed, with two chief clerks and two under clerks, those two Vice-Chancellors would be able to do the whole of the business now done by the Masters in Chancery (not taking up the present arrear of the Chancery Court), and to bring up the present arrears of the Incumbered Estates Court, and do all the business likely to arise in their courts, whether from incumbered property or unincumbered property, or the ordinary business of Chancery; is that your opinion?—No; I doubt very much whether the court could do it at all. If you sent the arrears of the Incumbered Estates Court to the Vice-Chancellors, they could not possibly do it.

2157. You think that two Vice-Chancellors, with each two clerks and two junior clerks, could not do it?—Not with the current business, if you sent the arrears and the present business, incumbered and unincumbered, of the Incumbered Estates Court, and the present business of the Chancery Court.

2158. At present the Incumbered Estates Commissioners really sit for chamber business but three days in the week?—Yes.

2159. You are quite of opinion that the business could not be done by the

two

two Vice-Chancellors and their staff?—No, supposing you sent in the arrears; and that is the universal opinion of the profession in Ireland.

2160. Mr. *Henley*.] You have stated that, in your judgment, unincumbered property ought not to be sold in the Court of Chancery?—It would certainly appear to me that it ought not.

2161. You have stated also your opinion that the sale of incumbered property ought to be accompanied with an indefeasible title?—I think it is very important to have that done.

2162. Will you state your reason why you think that there should be a power of selling incumbered property with an indefeasible title, and that unincumbered property should not have a power of being sold also with an indefeasible title?—For this reason: where there is an incumbered property, the incumbrancer has a right to sell; he has a right to bring the case into the court; you must deal with that case as you find it coming into court, and the question is, whether it is not better for the public and the creditor, that there should be what might possibly give parties interested the means of getting a better price for their land than otherwise; you cannot keep an incumbered estate out of court; creditors may bring the incumbered estate into court; you have it there to be sold, and then it becomes a question of mere expediency as to whether you are or are not to give a Parliamentary title to him. It is a different thing altogether where a man's estate is perfectly unincumbered, because in truth he then makes the Judges of the Court of Chancery his conveyancers for the purpose of disposing of his estate.

2163. What is the reason that you think that a creditor of an estate having an incumbrance upon it, has a right to have that property sold with a better title than he had when he lent his money upon it?—He has no right to have it.

2164. Why then would you give a creditor that advantage which you do not give to the owner of the property?—These cases must be dealt with as they occur; there are a great many cases in which you give certain advantages, arising out of certain matters, to parties. If you run a railway through a country you increase the value of the land, but it does not follow at all that every one has a right to say, "I must have a railway run through my country, or a railway run through my land.'

2165. The incumbrancer seeks to get his money paid upon the pledge upon which he has lent it?—Yes.

2166. Upon what ground is it that he has a right to call upon the public to make his pledge of land in a better position to him, than when he lent his money upon it?—He has no abstract right, but if it be deemed expedient in dealing with cases that are necessarily brought into the court to facilitate their sale, and increase the price, you merely deal with matter which of necessity will come in. The question is, what is the best mode of dealing with this necessity, but it is a very different thing to make the Court of Chancery, or any public court, a conveyancing court, and giving the benefit of a Parliamentary title.

2167. Why should an estate, sold to pay a creditor in part or in whole, have an indefeasible title given to it, that you will not allow an estate not incumbered to have given to it?—There is no right whatever; it is a matter of public expediency.

2168. Putting aside right, what is the reason?—The reason is, that in one case you must have the case necessarily brought in; if it be necessarily brought into the court, the question is, how you are to deal with it most advantageously and properly. It is a very different thing to say that every person may come and make his title through the court. I deal with cases where titles do come into court, and must necessarily come into court. Then it appears to me to be right to deal with them in the way which is most advantageous.

2169. What proportion of incumbrance should you think sufficient to have that advantage, if it be an advantage, of an indefeasible title?—I should think one-half or one-fourth of the incumbrances affecting the estate; this would prevent the creation of fictitious incumbrances.

2170. You had been conversant with the sale of much property before the Incumbered Estates Court was in fashion?—Yes.

2171. What is your experience of the proportion per cent. of the number of estates unable to be sold for the want of being able to make a title?—I can form no idea at all about it; I should think at the time almost all those estates which were really and substantially embarrassed in the country, had been brought into the Incumbered Estates Court; almost all those had; there are very few cases indeed, I have not known more than five or six within my

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experience of 10 years, in which, with the aid of the conditions of sale, and such fair conditions of sale as the Court of Chancery would attach to a sale, there were such perfectly bad titles that they could not be sold with the aid of those conditions.

2172. You stated that the Court of Chancery are in the habit of amending the conditions to prevent objections from purchasers?—Yes.

2173. The whole of your experience, whether before the Incumbered Estates Court was in operation, or afterwards, has been that that is the number of the estates that the Court of Chancery would not order a sale, in which you said they were not in the habit of doing when the title appeared bad upon its face?—During the 10 years that I have been in office five or six cases have occurred at the very outside in which I found that, even with the aid of such conditions as the Court of Chancery would consider it fair to annex, the sales could not be had.

2174. Can you give the Committee any idea of the whole number of estates coming under your purview in your large experience?—I cannot tell as to the whole number at the Bar; I cannot at the present moment conjecture; there have been five or six incurably bad titles, such as could not be sold even with the aid of the conditions.

2175. Viscount *Monck*.] Out of about how many?—Probably 100, but I can give a return of the number of sales that have taken place in the offices.

2176. Mr. *Henley*.] You have said, that in your judgment, no estate should be sold with an indefeasible title through the operation of the court, unless the incumbrance amounted to about one-fourth of its value?—Yes.

2177. The selling with an indefeasible title is of course a benefit to the owner, as well as to the incumbrancer?—Yes.

2178. What reason do you assign why a man having an incumbrance affecting one-fourth of his estate is to have a benefit conferred upon him with regard to the remaining three-fourths, which you will not let a man have the benefit of, who is so fortunate as not to have an incumbrance upon his estate at all?—The policy appears to be a wise policy, for the purpose of freeing estates from incumbrances; the court is given for the purpose of freeing estates from incumbrances, and bringing them into the market, and a power is given of a Parliamentary title; that was the principle of that particular legislation which took place at the time that the Incumbered Estates Court was established.

2179. That legislation might be considered in the then state of Ireland as exceptional?—Yes.

2180. The reasons which might be perfectly right and proper, as justifying an exceptional act of the Legislature, might not apply if it was to be continued in a constant state of things?—Certainly not.

2181. Putting aside the exceptional state, and the exceptional court, supposing it was to be referred to the ordinary tribunals of the country, are you still of opinion that property incumbered to the extent of one-fourth should have a power of being sold with an indefeasible title, and that no means should be devised by which property not being incumbered at all should have the same advantage of an indefeasible title?—Unless you bring the whole property of the country into the Court of Chancery, and make it a market overt for the sale of all property, and the conveyancing office of the whole country, you must stop short somewhere.

2182. In your judgment, is an estate sold with an indefeasible title more marketable and more valuable than one that is sold under an ordinary title?—Yes, I should say so, because it appears to me, that from the date of that sale you could take the estate into the market and deal with it at once from that point.

2183. You give a root to your title?—You give a root to your title.

2184. Sir *J. Graham*.] If an incumbered owner has landed property, worth 100,000*l*., and his debts amount only to 25,000*l*., is it the law or the practice that the whole 100,000*l*. may be sold to meet the debt of 25,000*l*.?—I do not know what is the practice in the Incumbered Estates Court, but I fancy it is not so; the advantage of definitively ascertaining the incumbrances beforehand in the Court of Chancery is this, that the decree of the Court of Chancery, after the ascertainment of the incumbrances, refers it to the Master, merely to sell the estate, or a competent part of it. Accordingly, having the amount of the incumbrances ascertained, the report and the decree definitively ascertaining them, we are in a condition to judge what will be a competent part of the property.

2185. What is the practice in the Incumbered Estates Court?—I cannot say; I believe that they require the whole title to be made out in the first instance.

2186. Do

2186. Do they sell the whole estate, if it be the wish of the incumbered proprietor so to meet a debt falling far short of the whole value?—No, I believe not. *J. J. Murphy*, Esq.

2187. The case that I put is, if an incumbered proprietor wishes to have an indefeasible title, and to sell the whole, what is the practice?—I believe they will sell in a case of that kind. I think in the Court of Chancery also, if we found that we had to sell, and that it was difficult to separate the denominations, the whole would be sold; or in any other special case, where there was sufficient cause, and all persons interested concerned, it might be done by the direction of the Lord Chancellor. 24 April 1856.

[*The Witness delivered in the following Paper:*]

NUMBER of SALES in Master *Murphy*'s Office in each year since the passing of the Incumbered Estates Court Act.

From 1 November 1849 to 1 November 1850 - - -	4
From 1 November 1850 to 1 November 1851 - - -	6
From 1 November 1851 to 1 November 1852 - - -	7
From 1 November 1852 to 1 November 1853 - - -	11
From 1 November 1853 to 1 November 1854 - - -	13
From 1 November 1854 to 1 November 1855 - - -	11
From 1 November 1855 to 24 April 1856 - - - -	15
TOTAL - - - -	67

Lunæ, 28° *die Aprilis*, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Mr. Kirk.
Sir James Graham.	Mr. Macartney.
Mr. Fitzgerald.	Mr. Grogan.
Mr. E. Ellis.	Mr. H. Herbert.
Sir Erskine Perry.	Viscount Monck.
Mr. De Vere.	

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

William Gibson, Esq., called in; and Examined.

2188. *Chairman.*] YOU are a Solicitor practising in Ireland?—Yes. *W. Gibson*, Esq.

2189. And also a member of the Incorporated Society of the Attorneys and Solicitors of Ireland?—I am a member of the council of that society. 28 April 1856.

2190. You have yourself had very considerable experience in the Court of Chancery?—I have had.

2191. You have had very considerable experience in that court, both under the old system and under the reformed system of that court?—Yes.

2192. You have also had large experience in the operations of the Incumbered Estates Court?—I have.

2193. You have yourself had the conduct of sales to a very considerable amount in that court?—I have had several.

2194. Will you state to the Committee what are the operations of that court; have those operations met with favour in the country?—I think the principle of the court has been very much approved of by the profession to which I belong; and generally speaking, with few exceptions, the practice is approved of very much.

2195. From its simplicity?—From its simplicity; and, above all things, from the extreme facility of personal communication with the Judges.

2196. And also the proceeding of the court has met with approval, from the absence of charges in the shape of stamps or fees?—Yes, decidedly.

2197. In the present state of the Incumbered Estates Court, do you practically meet with any embarrassment or difficulty in carrying on your business, arising from the state of business in the court?—Certainly.

2198. Will you state to the Committee how that arises?—I think in the month of June last I sent in a small schedule of incumbrances, with a view of distributing a fund, to Mr. Commissioner Hargreave's office, and they were unable to give any appointment upon that till the month of November. There is great delay in the distribution of money.

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2199. Do you recollect the name of the matter?—The Bingham estate.

2200. Was there any difficulty in it?—No; the delay was merely from its not coming to its turn.

2201. The delay arose from the pressure of other business in the court?—Altogether. They take the business in its turn from the time of your sending the schedule. They will not take the schedules till they are able to rule and regulate them. The clerk first goes through the schedule, compares it with the searches, and sees that it is all right, and then gives you a notice appointing a day. That notice I was not able to get for some months after I applied for it.

2202. In the simple proceeding of settling the schedule of incumbrances, practically, you experienced a delay of five months?—I did. But it is right I should say that in that case, upon the very ground of delay, I applied to the Commissioner to distribute a large portion of the fund before waiting for the final adjudication of the schedule, and he did so; and it is now the constant habit of the Commissioners, when the solicitors are able to show a case for the purpose, to distribute a large portion of the funds in all uncontested cases without waiting for the final adjudication of the schedule.

2203. That is where the priority of right is quite undisputed?—Yes; the solicitor states his knowledge of the property and calls upon the Commissioner to distribute a certain portion of the fund.

2204. Within the last two years there has been practically great difficulty in getting on with the business in consequence of the pressure of business in the court?—No doubt.

2205. Have you yourself formed any opinion as to the propriety of continuing some court, whether the Incumbered Estates Court, or any other, with power to sell incumbered estates?—With regard to that, I have come over here as representing the council of the society in Dublin, and I am bound to say I think the general opinion of the members of that council is that the Incumbered Estates Court should be transferred to the Court of Chancery, keeping the adminstration in reference to the sale and title of estates separate and distinct; that is to say, what I myself should approve of (and it is also the general opinion of the profession) is, that the better plan would be to annex two Commissioners to the Court of Chancery, and let them be confined to the business in which they are at present engaged, namely, the giving of Parliamentary titles, the investigation of those titles, the sale of estates, and the distribution of funds.

2206. That is, you would have a separate tribunal annexed to the Court of Chancery, which should be charged with those duties?—Yes.

2207. That is the view of the council, whom you represent upon this occasion?—I think so.

2208. Did the council come to any conclusion as to what ought to be done with the pending business of the Incumbered Estates Court?—There is a unanimous opinion that it would be utterly impossible to transfer it, with any regard at all to the conduct of the general equity business of the country, to the Court of Chancery at present; we are unanimously of opinion that it would be impossible now to work out the arrears of the Incumbered Estates Court with the current business in the Court of Chancery.

2209. Assuming that the council came to that unanimous opinion, what conclusion did they come to as to what ought to be done with the arrears, supposing your project of transferring to the Court of Chancery two of the Commissioners of the Incumbered Estates Court were carried out?—Their opinion is, that the Incumbered Estates Court should be allowed to go on for a year, or perhaps three years, for the purpose of enabling them to wind up the present business. In order to present to the Committee the views of the council upon that subject, perhaps the better course for me to take will be this; I received this morning a resolution from the council, and I will read it to the Committee: "Resolved, That it be impressed on our deputation that the feelings of the council of the attorneys and solicitors of Ireland are contained in the Petition No. 736, to the House of Commons, and the answers to the questions by the Commissioners, and that copies of those documents be again given to both members of the deputation, together with a copy of this resolution, and that they be requested to maturely consider those documents, and bear in mind that some of the council are of opinion that the Incumbered Estates Court should only be continued to wind up its present business, and others are of opinion that it would be beneficial to continue it, at least so long as the pressure of the business of the country may require it." There are members of the council who think that the Incumbered

bered Estates Court ought to be continued exactly as it is at present. I think that it would be better to annex it to the Court of Chancery, but keeping the Accountant-general's Office distinct.

2210. One of the answers which you have given with regard to allowing the Incumbered Estates Court a year or two to work off its present arrear of business, is inconsistent with the view of transferring two Commissioners to the Court of Chancery?—No doubt. I said that my idea would be to transfer two of the Incumbered Estates Commissioners to the Court of Chancery, and of course, in that case I would transfer the arrears with them. My notion is that you would require three Commissioners; probably one of the present Masters of the Court of Chancery could be annexed; and his particular jurisdiction could be allocated to him along with the two Commissioners. I think that it would require three Commissioners if you were to transfer the arrears.

2211. Supposing the Incumbered Estates Court was left as it is to work out the present arrears without transferring any of the Commissioners, and without any new Judges in the Court of Chancery, do you think that with their present staff they would be able to carry on that portion of the business relating to the sale of estates, exclusive of the present business of the Court of Chancery?—I think that depends upon whether or not you extend the principle to unincumbered estates.

2212. Have the council of your body formed any opinion as to whether this power of selling ought to be extended to unincumbered estates?—They are of opinion that it ought to be extended to the sale of unincumbered estates. They stated that in their answer to the Commissioners of Inquiry.

2213. Since that time the question has been very much canvassed; do they still retain the opinion that this power should be extended to the sale of unincumbered estates?—I think they do.

2214. They think that this new tribunal to be annexed to the Court of Chancery should have charge of the sale of both incumbered and unincumbered estates?—Yes.

2215. And also the distribution of the funds arising from those estates?—Yes; I would give them the same duties as the Incumbered Estates Commissioners now have.

2216. Would that not draw into this new branch of the Court of Chancery the greater part of the business of the Court of Chancery?—I think not; generally speaking very few questions arise of great difficulty in the distribution of funds in the Incumbered Estates Court; and when they do arise, I can see no reason for not sending any particular question of that sort to the Chancellor. At present they sometimes transfer the funds to the Court of Chancery for the purpose of having the rights of the parties adjudicated upon by that court.

2217. Is it not the case that there are comparatively few suits in the Court of Chancery in Ireland that do not involve in some stage the sale of land?—Latterly there have been very few. Since the establishment of the Incumbered Estates Court we have had very few sales in the Court of Chancery.

2218. Do not suits generally involve the sale of land at some stage; an administration suit, for instance, to administer the effects of a deceased party; if he has any land, that necessarily involves the sale of land. Supposing such a suit as that to be instituted, would you transfer one part of it to this new tribunal, and leave the rest to be administered by the court in its ordinary jurisdiction?—That is a question of more difficulty than I am prepared to answer. It occurs to me that if you give a Parliamentary title generally, you must have officers for the purpose of working out that particular branch of business, exclusive of other duties connected with the Court of Chancery.

2219. Would you see any difficulty in allowing the Judges of the Court of Chancery each to take his proportion of the business, including part of the sale of estates?—I think it would probably lead to great delay in the sale of estates; and if there is delay in the sale of estates, you must again get into the system of receivers, which, in my opinion, is very prejudicial to the well-being of the country.

2220. In order to get rid of the imposition of receivers, you would wish to have a rapid system, in which the estate would be sold as almost the first step in the suit?—Yes.

2221. Administration estates involve the sale of real estate; of course, if a judgment creditor institutes a proceeding to recover his judgment, that involves the

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the sale of real estate?—I think I would confine those proceedings to the Incumbered Estates Court.

2222. And a mortgagee in the same way?—Yes; in fact, it is so at present. I do not think that any man proceeds now to raise a mortgage in the Court of Chancery.

2223. Does not it result from this, that this new tribunal, if it was to have the sale of all estates, and also the distribution of the funds to be realised by those sales, would necessarily draw to itself four-fifths of the business of the Court of Chancery?—I think not. I think it is not so extensive in that particular branch as you seem to infer.

2224. Will you be good enough to indicate the particular class of cases that would not go to this tribunal?—Minors and lunatics and accounts. There is in Master Brooke's office now an account connected with the Belfast Corporation of enormous weight; that I have known Master Brooke engaged in for a week or ten days, without attending to any other business. There is a winding-up of the Tipperary Joint Stock Bank in Master Murphy's office; that must take up a large portion of his time; and I think that those matters are inconsistent with the duties of a Master charged with the rapid sale of an estate.

2225. Supposing, according to the suggested plan, that the Vice-Chancellors were assisted by two chief clerks, it would follow that that business which you have just described, namely, the winding-up of the Tipperary Joint Stock Bank, and the taking of the account of the Belfast Corporation, would be done by the chief clerk of the Judge, but would be subject to the Judge's opinion upon any question that arose?—My own notion is, that it would be a great deal better for one Judge to do the whole of the business. The feeling of our profession is, that it would be a great deal better not to delegate authority to the chief clerks, but that the system which is now established between the Incumbered Estates Commissioners and the Masters should be adopted. The opinion of the council is, that the present system of the Master's Office, with a little extended jurisdiction, is a perfect system. There are some matters connected with it which might be improved, such as not moving the original petition before the Chancellor, and that the distribution of the funds should be given to the Master, and the whole conduct of the matter entrusted to him.

2226. That would only apply to business coming under the 15th section?—Yes.

2227. Would you think of enlarging the power of the Masters under the 15th section, and continuing them as Masters to act with regard to other business upon references from the Chancellor and the Master of the Rolls?—Yes, I would.

2228. Would you not, then, be preserving all the evils of the old system arising from a cause being instituted before one Judge, and being referred by him to the Master, from whom it comes back with a report, and is reheard by the Judge?—In some cases that would arise no doubt, but the principal business that would then come before the Chancellor would be matters connected with the carrying-out and the specific performance of contracts. That would not involve references to the Master at all.

2229. The Chancellor and the Master of the Rolls would have to do the same business as at present, with the exception that the Chancellor would not have to pronounce the first order under the 15th section?—Yes.

2230. According to the present system of the Court of Chancery, if a cause originates before the Chancellor it is heard by him. If it involves some matter of account and inquiry the Chancellor refers it to the Master; the parties commence then before the Master. The Master hears the cause, gives his directions upon it, examines witnesses, and makes his report. The cause then comes again before the Chancellor to be re-heard. Perhaps he finds that the inquiry is not sufficient, and he sends the cause back to the Master again. The Master makes a fresh report, and after the lapse of perhaps five years the cause comes to be finally decided?—Yes, and I think that there might be some cases which would involve that difficulty, even if the plan which I suggest were carried out.

2231. Are the Committee to understand you to say that the view of the council of the Incorporated Society is that that system should be preserved?—No, I am not prepared to say that. It is merely a broad outline that I am prepared to answer about. We did not at all enter into those minute details. I am only giving my own opinion with regard to them.

2232. Did the council at all take into consideration the principle that the Judge before whom the cause comes first should have the charge of it from that moment to its conclusion?—Decidedly.

2233. And they approve of that principle?—They approve decidedly of that principle; but I think that the opinion of the council is quite in favour of having a greater number of judges, and having less business delegated to chief clerks. We think, in fact, that the same facility would not exist between persons holding the high position of Vice-Chancellors and the solicitors of Ireland, as now exists between the solicitors and the Masters and the Commissioners of the Incumbered Estates Court.

2234. And, also, you apprehend that under the system of chief clerks, they would become in the end virtually Masters?—Yes; and that the whole of the business would be conducted by them and the junior clerks, and the Vice-Chancellor would be an unapproachable sort of person.

2235. The plan which the council propose is this, that a separate branch of the Court of Chancery should be created for the sale of estates; that the jurisdiction of the Masters under the 15th section should be enlarged, and that the remaining businsss of the court should be left as it at present stands?—The opinion of the council (for I do not wish to mix up my own opinions with theirs, is stated broadly in the resolution which I have handed in, and the documents therein referred to my opinion) is that arrangements should be made for working out the arrears of the Incumbered Estates Court at present, that that court and the business should be transferred to the Court of Chancery, and that the power of sale should be extended to unincumbered estates. The council wish that the present system of the Masters should be followed up, giving them an extended jurisdiction; but, as far as I can see, they are strongly opposed to the system of Vice-Chancellors and chief clerks.

2236. Sir *J. Graham.*] You speak upon behalf of the great majority of the council in that particular?—Yes.

2237. *Chairman.*] You stated just now that the opinion of the council was, that in any change that took place the office of the Accountant-general, in reference to the sale of estates, should be kept distinct from the ordinary Accountant-general's office?—I give that as the opinion of the great majority of the profession with whom I have spoken, and my own opinion is strongly in favour of that course.

2238. Will you state your reasons for arriving at that conclusion?—In the Incumbered Estates Court the accountant is always in his office; he is always to be seen. You go up to him in the morning before you apply to the Commissioner for an order for the payment of money, and you get a certificate of the fund to be distributed in five minutes. He turns to his book and gives a certificate of it in five minutes. You then walk down to the Commissioner and make your application, and you get your order for the money forthwith. In the Court of Chancery, if you have to apply for money you leave a docket there the day before for a certificate of the funds, and in ordinary cases you get that docket the day after; but in many cases, where your docket is applicable to dividends or stock, you may have to wait a fortnight or three weeks for that certificate of the funds to enable you to get it. That is a particular hardship upon suitors in the Court of Chancery. I do not mean to throw any blame upon the Accountant-general of the Court of Chancery, and for this reason; the funds are more permanently invested, pending minor matters, and various things of that sort; and there are what we call standing orders upon the Accountant-general to pay every half year out of the dividends of certain stocks certain moneys. Of course that involves a very complicated keeping of accounts, which does not exist in the Incumbered Estates Court to the same extent. However, there is great delay. After the October dividends are received, you can seldom get an order for them for three weeks after they are due; and I think we should get into a great state of confusion if we mixed up with that the funds of the Incumbered Estates Court.

2239. Would it remove your difficulty, supposing you transferred the accountant of the Incumbered Estates Court with his staff to the Accountant-general of the Court of Chancery, and adopted in the Court of Chancery the simple practice of the Incumbered Estates Court?—If it were possible to do that, I think the objection would be removed.

2240. I understand a portion of your difficulty to arise from the complicated state of the funds invested under the direction of the Court of Chancery, as compared

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pared with the more simple state of the funds invested under the direction of the Incumbered Estates Court?—Yes; there are few investments in the Incumbered Estates Court.

2241. In the Incumbered Estates Court they pay out rapidly?—Yes.

2242. Whilst you can get an order to pay money in the Incumbered Estates Court immediately, there is a delay of three or four weeks in the Court of Chancery?—Yes.

2243. In the Incumbered Estates Court there is no fee at all?—No.

2244. Neither upon the order nor upon getting the accountant's draft for the money?—No.

2245. In the Court of Chancery is there a fee?—There is a fee to the Registrar of the Court of Chancery upon signing the draft; that is 6 *s.* 2 *d.*; and very often that presses heavily upon a poor man. He has to pay that fee every half year.

2246. Is it necessary in the Court of Chancery to have a special order of the court for the payment of money?—Yes, a special order of the Master of the Rolls, or of the Chancellor.

2247. And unless you obtain an allocation order or a standing order, each person, no matter how small the amount is which is to be paid, must obtain a special order?—Yes; but each person under an allocation order must pay 6 *s.* 2 *d.* upon the draft.

2248. Mr. *E. Ellice.*] What is the whole expense of getting a payment of 6 *l.* out of the Court of Chancery?—That would depend upon the nature of the payment.

2249. Take the case of a common payment such as you have just now referred to, upon which a fee of 6 *s.* 2 *d.* is paid upon the draft?—I do not think that ever occurs. Money very often is invested in the accountant's name, and an order is made to pay the dividends every half year. You have not to get a new order every half year; they act upon the same order; but every half year you have to pay 6 *s.* 2 *d.* upon the draft.

2250. Is that the only charge?—Yes.

2251. *Chairman.*] Supposing in the Court of Chancery at present a party is entitled to any sum of money, say 200 *l.*, and he has to make an application to the Master of the Rolls to pay out that sum, and to get it paid out by the accountant's orders, could you form any estimate of the average cost of getting that order?—That would depend upon the details. The Master of the Rolls is a very cautious judge, and you have to give him the fullest information. You may have to go back to a very remote state of circumstances and facts; but I should think the cost would be about 10 *l.*

2252. That is supposing the sum to be paid is only 200 *l.*?—I do not think that the amount makes any difference. I think it would cost as much for 100 *l.* as for 1,000 *l.*

2253. The ordinary course is, that the Master of the Rolls pronounces an allocation order?—Yes.

2254. What is that?—After the decree is made and the sale takes place it is referred to the Master to allocate the funds amongst the several creditors according to priority; he makes a report, and states the sum according to priority. Upon that you go to the Master of the Rolls. The Master of the Rolls makes an order on the accountant to pay those people according to their priority.

2255. That one order is applicable to all?—Yes; except there be a party in reference to whom there is any difficulty, in which case the party has to go to the Court again at his own expense.

2256. Every creditor, supposing there are 100 of them, has to pay 6 *s.* 2 *d.* before he gets his money out?—Yes, no matter what the sum may be.

2257. Are you quite correct in saying that there are no fees upon accounts?—The only fees upon accounts are when you want an account of the sum. You get a certificate of the amount standing to the credit of the cause for nothing; but if you want an account of the various sums paid from time to time to the various creditors, the charge for that account is something very small indeed. I think there is a rule that it is never to exceed a pound, no matter what the length of the account is.

2258. Adverting to a former answer, in which you suggested that the Masters should be continued with increased powers under the 15th section, and that a new tribunal for the sale of estates should be attached to the Court of Chancery,

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would not almost all the suits under the 15th section which should continue in the Masters' Office involve the sale of estates?—A great many of them would.

2259. Supposing a suit was instituted in the Masters' Office under the 15th section involving the sale of land, what would you do?—If my principle were carried out, that proceeding could be originated in the office of the Title Masters. I think you must commence that proceeding in that office.

2260. The greater part of the causes which are originated under the 15th section do involve the sale of land?—Not the greater part; a great many of them do, but there are a vast number for receivers only.

2261. Supposing a creditor institutes an administration suit the ordinary course of payment is this: He is paid out of the personal estate if the personal estate is sufficient, and if the personal estate is insufficient the real estate has to be sold. Supposing your suggestion were carried out, before which of the two tribunals should that suit be instituted?—Before the new tribunal, because the land is clearly liable under any circumstances.

2262. You would not have to sell the land till it was proved that the personal estate was insufficient?—That would apply to any case in reference to a judgment or a mortgage. At present we sell lands every day in the Incumbered Estates Court without any inquiry as to the assets of the original debtor.

2263. In instituting a suit of that character under the 15th section, is it not the practice that you first ascertain the amount of the personal estate, and if it is found to be sufficient you do not touch the land, but if it is found to be insufficient you sell the land?—Yes.

2264. You think that suits of that character which may involve the sale of estates should be taken before this new tribunal?—Yes, I think so.

2265. Sir *J. Graham.*] In the Incumbered Estates Court the converse is the rule. Without any reference to unexhausted personalty the debt is proved, and you proceed against the real estate immediately?—Yes. If I had a mortgage against the real estate of a deceased party, although his personal assets are the primary fund for the payment of the debt, the Incumbered Estates Court will not stop to inquire, but if you show a clear legal right against the lands the Judge will sell the lands.

2266. Therefore if the Incumbered Estates Court be transferred to the Court of Chancery, it will be necessary to provide, if the same facility of sale be extended, that the rule of the Incumbered Estates Court shall be imported into Chancery, together with the tribunal itself, otherwise there will be an inquiry whether the personalty is exhausted or not before the realty is made liable?—I do not think that is a question for me. There is no doubt it would be fair to apply a man's personal estate according to the rule of law.

2267. *Chairman.*] The Incumbered Estates Court at present exercises no jurisdiction whatever over personalty?—No.

2268. You cannot institute a suit for the administration of personalty there?—In the Court of Chancery they will not sell the real estate till you show that there is no personal estate. In the Incumbered Estates Court the reverse is the rule.

2269. Sir *J. Graham.*] If the Incumbered Estates Court be transferred to the Court of Chancery, will it not be necessary to provide, if the same facility of sale be extended, that the rule of the Incumbered Estates Court shall be imported into Chancery, together with the tribunal itself?—I do not wish to give any opinion as to the prudence or imprudence of that course. If you transfer the same powers, of course the Chancery practice must be changed by selling the estates, without reference to any inquiry as to personal estate.

2270. Sir *E. Perry.*] Would not your view be carried out by making the Title Masters or Commissioners a branch of the Court of Chancery, and referring the title to them only when an estate had to be sold. An administration suit would go then before one of the ordinary Masters, and if the personalty failed, and it became necessary to sell the land, might not the title be handed over to the Commissioners, as it is now?—I think it would be very desirable that the Commissioner charged with the sale of the estate should examine the title; that gives him full information with regard to the whole case, and enables him afterwards to distribute the fund. With regard to anything antecedent to the examination of the title, I think it is immaterial, that being done by a different tribunal.

2271. That is the operation now, that a suit is brought in the Court of

Chancery, either before the Master of the Rolls or one of the Masters, and when an order is made for the selling of the estate then the suit is handed over to the Commissioners in order to investigate the title to that estate?—I do not know of any case since the establishment of the Incumbered Estates Court in which a suit has been instituted in the Court of Chancery with the view of bringing it into the Incumbered Estates Court.

2272. It has been stated that that is the case?—I think that all those suits had been commenced previously to the establishment of the Incumbered Estates Court.

2273. Would not that be a very facile process if the Commissioners were made a branch of the Court of Chancery?—I think so.

2274. *Chairman.*] Following out the view of the Honourable Member for Devonport, does not it follow from that that you break through the rule of having the cause in charge of the same judge from its commencement to its termination?—Yes, of course it does; but I think that they are two different and distinct transactions. In the first part of the case the judge is *functus officio;* everything connected with his branch of the case is at an end as soon as you exhaust the personal estate; and you hand over the sale, the title, and the distribution of the funds to a new judge, and he acquires a thorough knowledge of everything essential in the distribution of the funds.

2275. He has to acquire the same knowledge that the judge from whom the suit was transferred already possessed?—I do not know that.

2276. You intimated an opinion that the rule of the Incumbered Estates Court, viz., that where there is a charge upon the land you shall sell it without any inquiry as to the personal estate, should be transferred to the Court of Chancery?—I did not express any opinion upon that point. I was asked whether that would not be the result. I did not express any opinion as to the prudence or otherwise of that course.

2277. Supposing that rule to be adopted, a father dies leaving a considerable real estate to his son; he leaves ample personal estate to pay off his debts, and directs them to be paid; but there is a judgment upon his real estate; if that rule were carried out the judgment creditor might go into the Incumbered Estates Court and sell the estate, although there was an ample fund to pay his debt?—No doubt he could. Then the party who is deprived of his real estate would be recouped out of the personal estate.

2278. Assume that in place of adopting the course which you have suggested, the plan shadowed out by this Bill, viz., to clothe the Court of Chancery with the power of selling real estates, were adopted, in a suit of the character that I have described you should first, in the place of selling the estate, inquire into and administer all personal estate before you could touch the real estate?—As well as I recollect the Bill, that would be the scope of it.

2279. You should carry on all your inquiries with regard to the personal estate, and apply that before you touched the realty?—That is my view.

2280. Can you state what would be about the probable expense of this inquiry into the personal estate before you could touch the realty?—It would be very difficult to name any particular sum; it depends upon such a variety of circumstances. The rule is, that the Masters usually report that there is no personal estate, except some party interested for the real estate shows that there is a personalty. The onus lies upon the party who wishes to protect the real estate. If that party is anxious for delay he will suggest, in every way, that the man died possessed of personal estate, and that will cause delay.

2281. Sir *J. Graham.*] Would not the Master designedly give delay till he shall have ascertained that there were no parties who might have a contingent claim upon the realty?—I conceive that the Master would not sell till he had ascertained the rights of all the parties in reference to the personal estate.

2282. *Chairman.*] Can you give the Committee any idea as to the expense of those preliminary inquiries in the Court of Chancery?—It would depend upon the fact of whether there was personal estate or not. I do not think that I could give a statement of the expense. The expense, I think, would not be very considerable, because the same advertisement that would go to the creditors to come in and prove their debts would be going on at the same time. There would be some delay. The expense would be inconsiderable.

2283. Mr. *E. Ellice.*] Great delay might take place?—Great delay might take place.

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2284. The personal estate might not be so easily got in?—Although injustice might be done to the owner of the real estate, he would be recouped afterwards by the owner of the personal estate.

2285. *Chairman.*] As a matter of practice, even according to the existing system, is it not ascertained, very early, whether there is personal estate or not?—Yes.

2286. The course of proceeding in the Master's Office is this: the Master requires the owner of the estate in the first instance, that is, the person who sells, to protect the real estate through the personalty, to show that there is personalty?—Yes.

2287. And if he does not do that the Master assumes that there is no personalty?—The wording of the report is, "I find there is no personal estate, no evidence of such having been laid before me."

2288. Mr. *E. Ellice.*] Supposing part of the personal estate was situated in a different country, the Master would wait till that personal estate was realised before he could dispose of the real estate?—I think not.

2289. If it was difficult of realisation he would wait till it was realised?—I think that he would report those facts specially to the Chancellor. If there was an outstanding mortgage, not payable for 10 years, I do not think the Master would delay the sale of the real estate for that time.

2290. Suppose it was a mortgage payable immediately; until that mortgage was got in no sale of the real estate could take place?—I am not quite prepared to say that; but I rather think not.

2291. *Chairman.*] The rule is, that the creditor has a right to resort to both funds?—The creditor has a right to resort to both funds.

2292. He is not usually tied up if there is any delay in realising the personalty?—I think not.

2293. In the majority of suits, is it not apparent at once whether there is personalty or whether there will be a necessity for selling the real estate?—Yes.

2294. Supposing you arm a judge with power to sell in such causes, when he has reasonably satisfied himself that it is necessary to sell the real estate, by that means you get rid of the whole difficulty?—Yes.

2295. Sir *E. Perry.*] By the evidence of Master Henn, it appears to be the practice at present, with reference to a petition for sale, that directly the incumbrances are ascertained, if there should happen to be the slightest complication of title, the party goes to the Incumbered Estates Court for a sale, as in that court he can obtain a Parliamentary title, and that court adopts the Master's order, ascertaining the amount and the priorities of the incumbrances, and distributes the fund accordingly?—No doubt, if you have a report ascertaining the incumbrances in the Court of Chancery, the officers of the Incumbered Estates Court will allow you to make that into a schedule, and will act upon it.

2296. If an ordinary administration suit, or a suit for the sale of lands, were commenced before the Master, all the preliminary inquiries up to the order for sale could be made there, and when the title is to be investigated it might be referred to the Masters of whom you speak?—Yes.

2297. Therefore, the law might be left as it is now as to priority or the chargeability of personalty, and this court might be transferred in the way that you suggest?—Yes; it would be exactly adopting the present system of letting the Masters go on to ascertain the debts, and then transferring the matter to the Title Masters.

2298. That course would not be open to the objection suggested by the Attorney-general as to cutting the suit in two, for it would be commencing a new inquiry altogether?—I think it would not be open to the objection suggested by the Attorney-general.

2299. Mr. *Fitzgerald.*] In the case of an administration suit at present the amount of the personalty and the debts are ascertained before the Master, and the debts having been ascertained, the creditor may then go at once before the Incumbered Estates Court, and the Incumbered Estates Court have power to sell?—Yes; but he may go to the Incumbered Estates Court without going to the Court of Chancery at all.

2300. Supposing your suggestion is adopted, it would be equally possible to commence an administration suit, in which case the Master of the court would ascertain the amount of the personalty and the debts, and then the case would be

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referred to the Title Master, or it would be possible to go to the Title Master at once?—Yes, exactly so. If you go to the Court of Chancery you can get a report and transfer it to the Title Master, or you may go at once, and pass over the report altogether. I believe it very unfrequently turns out in the case of deceased debtors that the personal estate produces a sufficient amount.

2301. Then you think that there would be no change whatever?—I think none whatever.

2302. *Chairman.*] One of the complaints made with regard to the limited jurisdiction of the Incumbered Estates Court has been that it is not able to administer or make inquiries as to personal estate?—I think it is.

2303. And sometimes injustice has been done in consequence of that inability, there having been one suit in the Court of Chancery to administer the personal estate, and another suit in the Incumbered Estates Court to administer the real estate?—That sometimes occurs, but not frequently, I think.

2304. I believe the Government Bill was before the council of the Incorporated Society?—It was.

2305. And I judge from your evidence that it did not meet with general approval?—It did not.

2306. I infer from your evidence that it rather met with general disapproval?—I think it met with general disapproval.

2307. What is the opinion of the council as to the sale of unincumbered estates?—We are of opinion that the principle which applies to incumbered estates should be extended to unincumbered estates.

2308. Do you not find in practice in the Incumbered Estates Court great facility and advantage from the absence of fees and stamps?—Very great.

2309. Do not the public derive in the administration of this new code great protection in the publicity which arises from the absence of fees and stamps?—So much so, that in my opinion if you transfer this jurisdiction to the Court of Chancery it will be absolutely necessary for the protection of the public that they should be at liberty, without the payment of any fee, to examine the documents in any case.

2310. And that in case of requiring copies, he should only pay just sufficient to remunerate the clerk for copying?—Yes.

2311. Could that be carried out, supposing the Incumbered Estates Court to be transferred to the Court of Chancery, by authorising the Court of Chancery to abolish or reduce those fees and stamps which interfere with publicity or with the administration of justice?—We think that the fees in the Court of Chancery ought to be abolished altogether, without reference to the Incumbered Estates Court.

2312. If your proposition was carried out, the total abolition of the fees and stamps in the Court of Chancery would create a great falling off in the Exchequer: how would you propose to supply that deficiency?—If you extend this Bill to the sale of unincumbered estates, my opinion is that it will give an enormous quantity of business to the Court of Chancery with reference to those estates, and that the sum to be derived in the shape of stamp duties on conveyances will be immense. My opinion decidedly is that, with few exceptions, every man in Ireland having an unincumbered estate, will put his estate into that court, with the object of getting a Parliamentary title.

2313. Supposing the jurisdiction to be limited to the case of a *bonâ fide* sale out and out?—If you limit the jurisdiction to the case of a *bonâ fide* sale out and out, I think it will make very little difference. There are very few sales of unincumbered estates in Ireland, scarcely any. Very few men in Ireland sell their estates except driven to it by debt.

2314. Does not the infrequency of the sale of an unincumbered estate in Ireland arise also partly from another cause, namely, the difficulty and expense of making out a clear title?—I do not know that. I have sold one or two unincumbered estates, for gentlemen wishing to go to Australia to live; but, with those exceptions, I do not recollect a man ever selling an unincumbered estate.

2315. Has it arisen at all from the difficulties at present of making out a clear title?—I do not think it has.

2316. Supposing the estate to be a small one?—No; you must make out a title for the Incumbered Estates Commissioners, and a very strict title too; people who are ignorant of the law are under the impression that you can sell

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any estate in the Incumbered Estates Court, but that is quite a mistake; they are very, very strict indeed.

2317. Assuming your view about the sale of unincumbered estates to be right, from what source would you contemplate that this deficiency in the revenue caused by the abolition of fees and stamps should be made up?—I do not know that, except from the general resources of the country.

2318. There is a proposition in this Bill, that inasmuch as the reduction of fees and stamps (I am not speaking now of the abolition) would be rendered necessary by giving to the Court of Chancery this new jurisdiction, the deficiency created by that reduction should be made up by the deduction of a small per centage from the amount realised on the sales of estates, say one per cent., or a half per cent.; do you approve of that proposal?—I think it would be very preferable to the present system of fees.

2319. You would rather have the abolition of the fees without any substitute?—Yes; but I think that your plan is very preferable to the system of taking fees.

2320. Sir *J. Graham.*] The abolition of stamps and fees in the Court of Chancery in Ireland would hardly be possible if they were maintained in the Court of Chancery in England?—Ireland is a much poorer country than England.

2321. The stamps and fees are now a source of revenue, are they not?—I do not believe that they are; I think that they go to the support and maintenance of the courts there. I do not think there is any revenue derived from the Chancery funds or the fees. They all go to the Suitors' Fee Fund, which at present is scarcely able to meet the demands upon it.

2322. And from the Fee Fund the officers of the court are paid?—Yes.

2323. Therefore if you abolish the stamps and fees, the officers of the court must be paid from some other source?—Yes, as the Incumbered Estates Court officers are now paid.

2324. That is, by the public?—Yes.

2325. You have said that you think it very desirable that a small per centage should be levied upon the sale of property?—I think it would be preferable.

2326. Would not that be a shifting of the burden from those who now pay to those who are now exempt from payment, namely, from the suitors in general, to those who sell property in distress?—No doubt.

2327. Is it an equitable change, do you think, that a charge which has been borne for a long time by the suitors, and a charge which is sanctioned by prescription, should suddenly be shifted to those who sell their estates in consequence of incumbrances?—You are proposing to make a very great change in the administration of the law, and if that be done, I think the Government must be prepared to make some sacrifice in the shape of revenue, for it will be difficult to have one system adopted with regard to the imposition of fees for one branch of practice and to abolish them with reference to the other branch; and I think that if you give a Parliamentary title, it will be absolutely essential to give free access to all the documents. It is a matter of frequent occurrence poor men going to look at schedules of incumbrances. No man can do that in the Court of Chancery, even by paying a fee, without a solicitor; he must pay a solicitor to find out all those things for him.

2328. You think that all the expenses of the court should be borne by the public, or that there should be a per centage levied upon the sales, relieving the suitors and charging the sellers?—I do; but the enormous addition to the revenue in the stamps upon conveyances would very considerably make up for any loss of that sort.

2329. That is upon the assumption that the power of sale be extended to un incumbered property, and that the owners of unincumbered property be allowed to go through the process of sale to obtain an indefeasible title without an intention to sell?—Yes; and probably the increased stamp duty that has arisen from the great increase of the sales of property since the establishment of the Incumbered Estates Court in Ireland has altogether met the expenses of the Incumbered Estates Court.

2330. *Chairman.*] The stamp duty at present upon the conveyance of estates is an *ad valorem* duty; it is regulated by the value of the property?—Yes; it is 10 *s.* per cent.

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2331. The amount realised by the stamp duty could be easily ascertained, when you had ascertained the value of the land which has been sold?—Yes.

2332. Mr. *Fitzgerald.*] Dr. Longfield expressed an opinion, that if the power of sale is extended to unincumbered property, it will lead to a very small extension, if any, of the business of the court; do you agree in that opinion?—I think if it is possible to limit the power to the sale of unincumbered property for the purposes of sale, it will lead to a very little increase of the business of the court.

2333. The Committee is informed that now, when the power of sale is limited to incumbered estates, parties constantly take advantage of the powers of the court, by making fictitious incumbrances; do you not think that in case the power of sale is extended to unincumbered estates, there would be an equal facility for parties to avail themselves of the powers of the court, by making fictitious incumbrances?—I think the facility would be much greater. I know cases at present in which people have an objection to sell their estates in the Incumbered Estates Court, because it would raise a suspicion of their credit; but if you extend the power of sale to unincumbered estates, that objection would be removed.

2334. In the Incumbered Estates court they do not require you to raise the claims of personal representatives to old mortgages?—No, they do not interfere with legal estates there.

2335. In the case of settling an estate, would it not be a far cheaper process to have recourse to this court, if it had the power of dealing with unincumbered estates, than to adopt the ordinary course of settling an estate now?—Certainly.

2336. The amount of business that would come before the court if it had that power would be very large indeed?—I think almost every man in Ireland would put his estate into the court if the Bill is so framed as to enable him to do it, in order to obtain a Parliamentary title.

2337. Mr. *Grogan.*] With regard to the expense which would be thrown upon the public if the power of sale possessed by the Incumbered Estates Court were transferred to the Court of Chancery, at present the whole of the expense of the court is borne by the State?—Yes.

2338. Is it, therefore, your view, that if this power be transferred to the Court of Chancery, the expense should in like manner be borne by the State?—Certainly.

2339. Would it not, then, be the case that the State, as the great source and administrator of justice, would bear the expense of administering justice?—Certainly.

2340. A suggestion has been thrown out to you, whether the practice in the Incumbered Estates Court of deducting a half per cent. upon the amount of money realised by sales might not be an eligible source for recouping the money that would be lost by the abolition of the fees and stamps in the Court of Chancery, and you have expressed an opinion rather in the affirmative of that?—I think it would be the best way, unless the expenses are to be paid by the State.

2341. You are perfectly clear with regard to the necessity and utility of abolishing the fees and stamps, if the power of selling unincumbered property be given to the Court of Chancery?—Decidedly.

2342. Does it occur to you that if a half per cent. be deducted from all the funds realised on the sales of property, whether incumbered or unincumbered, in the Court of Chancery, that will be making parties concerned with that branch of the Court of Chancery bear all the expenses attendant upon the Court of Chancery?—Of course, if that is to be the only fee levied in lieu of the present fees, it will be so.

2343. Mr. *E. Ellice.*] Are not unincumbered estates better able to pay those fees than incumbered estates?—Yes, they are; and in my opinion, if you extend this principle, some additional fee might be put upon the sale of unincumbered estates.

2344. Sir *J. Graham.*] A fee levied upon unincumbered estates is a fee levied upon wealth; a fee levied upon incumbered estates is a fee levied upon poverty?—A man goes to sell an incumbered estate for the purpose of realising his debt.

2345. Mr. *Grogan.*] Would not the injustice still remain, that the suitors of one department of the Court of Chancery would practically be taxed for the whole

whole expense of the Court of Chancery?—No doubt, if that is to be the only fee levied.

2346. *Chairman.*] That is, if you abolish all fees and stamps?—Yes.

2347. Sir *E. Perry.*] A person selling an unincumbered estate is not a suitor?—No; he is getting the conveyance of a court which is established for the dispensation of justice.

2348. Mr. *E. Ellice.*] And a man having an unincumbered estate who comes to the State for a Parliamentary title, should pay for it?—Yes; and for that reason I would make a difference between the fee on the sale of unincumbered estates and the fee upon the sale of incumbered estates.

2349. Mr. *Kirk.*] He would not come to the court, would he, unless he thought it his interest to pay a half per cent. to get a better title than he had previously?—No; and I think that in many cases it would be the cheapest way of making a title.

2350. *Chairman.*] Supposing you only reduce or abolish those fees which prevent publicity, and which are necessary to be removed, would there then be any injustice in imposing a tax of a half per cent. upon those for whom this new jurisdiction was created?—There would not.

2351. Sir *E. Perry.*] Evidence has been given before the Committee as to the necessity of exercising great vigilance in reading the abstracts; are you of opinion that that vigilance is necessary?—I am, decidedly.

2352. Do you think, therefore, that the duty of reading the abstracts should be given to Equity Judges generally, or to a special body whose attention has been directed to that branch of the law?—I would make the Commissioners read the abstracts of title. Afterwards, when they come to distribute the fund, and are familiar with the entire title, they do it with much greater facility than if they had not read the title.

2353. The evidence which you have given is founded upon that view that you would have Title Masters, but those should be the sole persons in the Court of Chancery devoted to considering abstracts?—Yes.

2354. It might be done either by having Title Masters, or by letting the present Commissioners be attached to the Court of Chancery, and performing their duties as now?—Yes.

2355. If a Parliamentary title is to be given to all estates sold under the order of the Court of Chancery there would be no difficulty whatever when the ordinary judge made an order for sale in transferring that duty to the Title Masters?—None whatever.

2356. As to the reform of the Court of Chancery, you stated that the profession of Ireland are very well satisfied with the system by which the Masters under the 15th section dispense justice?—Yes.

2357. That being amended by their being able to take cognizance of a suit in the first instance without a necessity of a reference to the Chancellor?—Yes, and distributing the funds particularly.

2358. And you object very much to the system of Judge and Master practice?—Yes.

2359. Do you see any difficulty in applying that same system that you approve of to all the Judges in Equity, that a Vice-Chancellor or the Master of the Rolls should, if he had time, administer the whole suit himself?—I know it has been the practice of the present Master of the Rolls to do a great deal of the business that in former times used to be transferred to the Masters. I will illustrate that by stating a case; I applied some time ago to the Master of the Rolls to give an allocation order to the Master to allocate the rents of a very large estate in Ireland, which I was selling in the Incumbered Estates Court, and which had a receiver over it. I applied to have the funds allocated amongst 25 petitioners. The Master of the Rolls said, "I will not give this reference; it will cost 100*l.*; it will take six or eight months. Do you go home and make out a schedule for me how this fund ought to be administered, and give notice to all the parties." I did so, and the Master of the Rolls made that order. It was correctly made, as I was familiar with the facts.

2360. For the benefit of the suitors is it not very much to their advantage that the Judge should undertake the whole duties of the suit?—Yes.

2361. Have you much cognizance of common-law practice?—No, very little.

2362. The Nisi Prius Judges have those duties to perform occasionally?—Yes.

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2363. And the highest Judges of the land, the Chief Justice, and so on; therefore is there any reason why an Equity Judge should not go through the same details?—I think very often matters which are done by the Master, could be better done by the judge.

2364. Would it be very much more for the benefit of the public that the number of judges should be increased than that a series of clerks should be appointed?—That is decidedly my opinion; that is the view of people who differ from the Bill of the Attorney-general; that in place of having two Vice-Chancellors and a parcel of clerks, we would have four, five, or six judges, and I would combine both the judicial and the ministerial duties. I would have smaller salaries and a larger number of judges.

2365. Sir *J. Graham.*] If your plan were adopted, and the judicial powers of the Masters were extended, it would be necessary to add to the staff of Masters, would it not?—It would.

2366. They have no registrar at present, have they?—No, they have no registrar at present, and I think that that is one of the great deficiencies of the Master's office. The Master makes a minute of what the decision is to be. The solicitor who has the carriage of the proceedings afterwards reduces it into form; if it is opposed to his client's interest, he may delay it considerably, or give it a more favourable form than the Master intended; that goes before the Master, and the Master, from the pressure of business or otherwise, may keep it for some days. I think every Judge should have a registrar, who should deliver out and make his own order, and the Master's order should be made by the Masters, and handed out in the evening to the solicitor.

2367. Each Master, according to your view, should have a registrar?—Yes.

2368. Are the officers which are now attached to each Master numerous enough and competent enough to transact the business under the Masters, if the jurisdiction of the Masters were to be extended in the manner that you suggest?—I think that they are not sufficiently numerous, but I think they would be competent.

2369. You would have a registrar to each Master, and additional clerks?—I think giving them a registrar, in addition to their present staff, would be sufficient.

2370. Would you give them a registrar and an additional clerk?—No; I think I would not give them an additional clerk; I think that the Master, with the examiner and the two clerks which he has at present, and a registrar, would be enough.

2371. Who should appoint the registrar?—The Master, I think; I think it a monstrous thing that a Judge should be held responsible for the duties of his clerk, and yet should not have the appointment of that clerk.

2372. Do you speak the opinion of yourself only, or that of your brethren?—I do not think we discuss these matters in the council.

2373. Are you of opinion that the appointment should not be given to the Castle?—Yes. I think that the universal opinion of the profession is, that a Judge should have the appointment of his own officials.

2374. What is the opinion of the Four Courts as to giving the appointment to the Castle?—I do not know.

2375. Supposing the patronage of the appointment of the registrar to be vested in each Master, would you give any veto upon the appointment?—Yes, certainly.

2376. To whom?—I think to the Chancellor.

2377. What is the state of the taxation of costs now?—It has led to the most fearful consequences; it delays the distribution of the funds. The Taxing Masters of the Court of Chancery consider that they are merely ministerial officers, to administer the rules in the strictest possible way; and if the least mistake arises you must go back to the court and get it rectified at the expense of the fund; whereas in the Incumbered Estates Court the officer goes to the Commissioner, and says, "Is this a fit case in which I should allow anything extra?" and he acts upon the direction of the Commissioner.

2378. If you transfer to the Court of Chancery the whole business of the Incumbered Estates Court, and no provision further than is contemplated by this Bill be made for taxation, considering the present state of the business in the Taxing Masters' Office, what would be the consequence?—It would be perfectly impracticable for the business to be worked, but I should say that under the

the present circumstances of the Masters, the registrars should have the taxation of costs of every case in the office. We have now constantly to get a document out of the Court of Chancery, and to pay 3*s.* or 4*s.* for the purpose of satisfying the Taxing Masters that we are entitled to 6 *s.* 2 *d.* You must give them evidence that you have attended upon every subject, whereas if you attach the office of Taxing Master to one of the Master's own officials he would have nothing to do but to go to the Master, or refer to the entries in the books in his own office, and you can have your costs taxed at once.

2379. Each stamp now before the Master is attended with considerable expense?—Yes.

2380. It is not so in the Incumbered Estates Court?—No.

2381. Sir *E. Perry.*] Would not the registrar also be able to perform the duties of a Taxing Master?—I think so.

2382. Sir *J. Graham.*] Then you would have different principles of taxation by each registrar?—No, I would not. My experience of the three Masters now is that there are sometimes different principles applied.

3283. Your experience now is that there is diversity of decision and opposite principle?—That does not apply in very many cases; there are some matters in which they differ.

2384. If the Incumbered Estates Court Judges be converted into Title Masters they must have a staff, must they not?—Yes, similar to the other Masters. I think I would give them a registrar, an examiner, a chief clerk, and a couple of other clerks.

2385. What would you do with the present establishment of the Incumbered Estates Court. Would you transfer it to the Court of Chancery, or would you pay them off and have a new staff?—I would not have a new staff; I think it would be necessary to transfer nearly all, if not all of them, to the Court of Chancery.

2386. In whom would you vest the selection of those who should be transferred and those who should be paid off?—I think that must be in the Government.

2387. If you transfer the existing Judges of the Incumbered Estates Court to the Court of Chancery as Title Masters, would you not give them the selection of their own immediate officers?—Yes, of their own registrar, and chief clerk, and junior clerk; but in the case of the accountant and the different officers connected with the court, I do not see that it would be necessary to give them any veto or selection as to those parties.

2388. You have spoken strongly in favour of the system of the accountant of the Incumbered Estates Court, as contrasted with the system of the Accountant-general in the Court of Chancery. If a transfer took place in the way which you recommend, and there be Title Masters appointed, would you have two Accountants-general in Chancery, or would you have a fusion of the whole of the accountants' business in the hands of one accountant Master?—I should prefer having two separate and distinct branches.

2389. Should both branches be controlled by the Chancellor?—Of course; according to my plan I would have the whole system of Title Masters under the control of the Chancellor.

2390. The Chancellor should exercise a general superintendence over the whole?—Yes, just so.

2391. And he should have a large power of making rules, probably concurrently with the Master of the Rolls?—No doubt.

2392. And those rules should be binding upon the Title Masters, and upon the Vice-Chancellors, with extended jurisdiction?—Yes.

2393. One Accountant-general should be appropriated to the sale of incumbered and of unincumbered property if an extension should be made, and the other Accountant-general should perform the other functions in the same way that he does now?—Yes.

2394. And all should be controlled by the Chancellor?—All should be controlled by the Chancellor.

2395. And subject to general rules?—And subject to general rules.

2396. The Master of the Rolls concurring in the general rules?—I believe that the present system is to lay the rules before the Master of the Rolls.

2397. Mr. *Fitzgerald.*] You contemplate, in fact, merely transferring, not the present individuals, as Commissioners, but the Commissioners of the Incumbered Estates Court to the Court of Chancery, calling them by another name; and you

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intend that their functions and powers should be the same, and that, as nearly as can be, their staff and method of proceeding should be the same?—I do; with a power of appeal differing from the present power; I would not have a power of appeal from one Commissioner to the three.

2398. *Chairman.*] You have suggested that if a suit is instituted and has arrived at the stage in which the sale of land is to take place, it should then be transferred to this new tribunal?—Yes.

2399. Would you consider it right to leave it optional with the parties to that suit as to whether they would ask for a Parliamentary title or sell without a Parliamentary title according to the old course?—I would not leave that optional; because, if so, it must be with the party who had the carriage of the proceeding, and that might prejudice the rights of other parties, who would perhaps object to that course.

2400. Supposing the parties to a cause agreed?—I think that the parties in a cause interested in an estate ought to be able to agree to anything that they think for their benefit. I would allow them to do anything that they liked by consent.

2401. And then it would not be necessary to take the cause to the Title Masters?—No.

Jovis, 1° die Maii, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Mr. Grogan.
Mr. Kirk.	Sir J. Graham.
Mr. De Vere.	Mr. Deasy.
Mr. Fitzgerald.	Mr. Whiteside.
Sir Erskine Perry.	Mr. E. Ellice.
Mr. H. Herbert.	Mr. Henley.
Viscount Monck.	

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

William Gibson, Esq., called in; and further Examined.

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2402. *Chairman.*] DO you wish to add to or explain any answer that you gave when you were examined on Monday?—Yes; I wish to qualify my answer to Question 2229, by stating that I would take from the Master of the Rolls all orders in reference to the distribution of funds and other matters in cause petitions under the 15th section of Sir John Romilly's Act. Then, in reference to Question 2280, I was asked a great deal as to the delay of the administration of the personal estate, and what effect that would have. I wish to add to what I then stated, that considerable delay often occurs in marshalling the real and personal estate of deceased debtors, and I think that it would considerably delay the sale of the real estate if we were to wait for the marshalling of the assets of deceased debtors.

2403. In such cases the sale of the real estate would not be postponed till the assets were marshalled, unless it appeared probable that the personal estate would be insufficient to meet the demands?—I do not know how that would be; according to the present practice of the Court of Chancery, it could not be ascertained till the account of the result was taken.

2404. The marshalling would usually be in a case where it was necessary to sell both estates?—No doubt; but you could not tell whether there was a large personal estate, and two classes of debts to be paid out of it. If you were to wait to ascertain whether it was sufficient to meet both classes of debts, that would delay the sale.

2405. Mr. *Deasy.*] The real estate is answerable for all classes of debtors?—No doubt it is.

2406. *Chairman.*] The marshalling of the estate could create no additional delay in the sale of the estates?—I should have thought that it would.

2407. The

2407. The marshalling would only arise where it was necessary to dispose of both the estates?—There might be enough personal estate to pay the debts upon the realty, and it might afterwards turn out that it was necessary to exhaust all the personal estate to pay the debts upon it.

2408. You made some observations, upon the last day, upon the subject of receivers, and some members of the Committee expressed a desire to hear your views upon that matter; can you state whether the operation of the Incumbered Estates Court, and the recent alterations of the law, have materially reduced the number of receivers annually appointed in Ireland?—I think that they have.

2409. Has the reduction been substantial?—I think that it has, and the removal of the receivers that had existed for many years has been very extensive.

2410. I believe you are aware that the operation of the Incumbered Estates Court has been to dispose of a great number of estates which were the subject of Chancery suits; and having sold the estates, of course the receivers have ceased to act?—Yes; great numbers indeed.

2411. That has been one of the results, in reference to Chancery suits, and that has also been followed by another result, namely, that in the general sale of incumbered estates you have, of course, reduced the number of estates subject to receivers?—No doubt.

2412. Your view is at present, that a much smaller number of receivers is now appointed than was the case some six years ago?—Very much; and over smaller properties, I think.

2413. What do you mean by smaller properties?—Smaller in amount; all the great properties over which there were receivers have been disposed of by the Incumbered Estates Court.

2414. The receivers now acting, whatever their numbers may be, are principally acting over small estates?—Yes, I think so.

2415. Mr. *Deasy.*] Have not the delays in the Incumbered Estates Court, in selling and distributing the funds, increased considerably the applications for receivers within the last three or four years?—There is no doubt they have.

2416. Mr. *Whiteside.*] That is, the receivers to the Court of Chancery?—Of course. I may mention the case of an estate which has been in the Incumbered Estates Court now for some three years, where a petition was presented by the owner. It is a large estate in the south of Ireland; I am concerned for a mortgagee of that estate to the amount of about 40,000 *l.*; there is two years' interest due upon that estate. My client was very anxious to avoid applying for a receiver, and he did not do so till we found a great delay in the sale in the Incumbered Estates Court. We have now an order for a receiver. An application has been made for a sale in July, the owner being pressed by the receiver; and it very often happens that the receiver presses the owner to expedite the proceedings in the Incumbered Estates Court for a sale.

2417. *Chairman.*] Can you state the name of that case?—It is Keily's case.

2418. Do you know the date of the proceedings?—I do not.

2419. Sir *E. Perry.*] You only state the general fact?—Yes; and also, that there was an application made to the Commissioners to fix the day of sale in July; and a statement was made by them, that they could not fix it till next October. The Commissioner stopped the owner's counsel, stating that he had then more property to be disposed of than could be sold between that time and the vacation. I think it likely that the delay rested there with the owner very much.

2420. *Chairman.*] When you speak of there being quite sufficient sales for the interval between that time and the vacation, does not the vacation of the court commence somewhere in July or August?—Yes; I do not think that they sell after the middle of July.

2421. In reference to the appointment of receivers in consequence of the delays in the Incumbered Estates Courts, supposing the Court of Chancery obtained this new jurisdiction, with a power to sell the land at the earliest stage of the suit and bring the money into the court, would not that in a great measure dispense with the necessity of appointing receivers?—I think it would; any means of a quick and facile mode of sale is the only method that I could suggest.

2422. If you facilitate the sale, you get rid of the necessity of receivers?—No doubt of it.

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2423. Mr. *Fitzgerald.*] Would you think it objectionable, supposing it is considered necessary to continue the Incumbered Estates Court, to give that sort of power of appointing a receiver in certain cases when necessary?—I would not give that court the power of appointing a receiver. I think that they have quite enough to do at present. The expense of appointing a receiver in the Court of Chancery is not so great; it should only be resorted to in extreme cases.

2424. *Chairman.*] You are fully impressed with the evils flowing from the system of receivers?—Yes; but I think they are very much less than they were; the state of the country is greatly improved; it would be a desirable thing to have as few as possible.

2425. I believe, also, the practice of the Court of Chancery, under the Receiver Master Lyle, has been very much facilitated and improved?—I think so.

2426. Impressed as you are with the evils of this system, the remedy which you suggest to the Committee is to facilitate an early sale of the land, and thus to get rid of the necessity for receivers?—Yes; I think that is the fairest means for all parties.

2427. And, in accomplishing that, you would get rid of the evils?—Yes.

2428. A creditor seeks to appoint a receiver to catch the rents, to keep down the interest on his demands?—Yes.

2429. Mr. *Deasy.*] Are you aware of instances in which owners have latterly presented petitions to the Incumbered Estates Court for sale, in order to prolong their enjoyment of their rights?—I do not know that I am aware of anything latterly of the sort; I know that such things have been done.

2430. Mr. *Whiteside.*] You have stated the evils incident to the system of receivers; have you looked over the Bill which bears my name upon it?—I have done so.

2431. Is that Bill framed so as to remove the difficulty?—It is some time since I read the Bill with attention; it appeared to me at the time that there were several charges therein which would be an improvement upon the present system.

2432. You do not know that there are about 2,000 receivers?—I see by Master Murphy's evidence, that there are about 2,100 receivers; I should not have thought that there were so many if I had not seen it so stated.

2433. You have stated that latterly receivers are appointed over smaller properties?—I think they are.

2434. Are not the evils of receiverships greater in proportion to the smallness of the property?—Perhaps, according to the present system, they are; but when we come to work out the system of Master Lyle, of district receivers, and the receiver giving security, that objection will not arise.

2435. Suppose a property produces 50 *l.* a year, and you appoint a receiver over that property, what sum do you think would be forthcoming to the creditor after the payment of the annual costs?—With regard to the costs connected with receivers, they are very much less indeed than they used to be under the old system.

2436. As a general rule, would not it follow that the smaller the property the less it would be able to bear the expense of the receiver system?—Yes, it would be so.

2437. Do you see any objection to assimilating the law, as to the appointment of receivers, between England and Ireland?—I do not know what the law in England is.

2438. Receivers are not so numerous in England as they happen to be in Ireland?—No.

2439. Have you read the Procedure Bill?—I have done so.

2440. Have you read the second Bill in the list of the number of five that have my name?—I do not know.

2441. Do you approve of the principle of giving to the court the power of selling an estate in the first instance, when they see that the sale is inevitable, and that they should not be allowed to put a receiver over it?—Decidedly I do.

2442. You are of opinion, in common with the bulk of your profession, that the arrears in the Incumbered Estates Court, as you have described them, could not be safely thrown into the Court of Chancery to be worked off?—I think it would be quite impossible to do it.

2443. You mentioned an estate, of which you explained the circumstances. There was a petition about two years ago, and a posting for a sale next October; do you not know that there have been many cases in the Incumbered Estates Court

Court in which the sale has not taken place for three years after the lodgment of the petition?—Many; but in a great many of those cases the fault altogether arose with the solicitor, or perhaps the party was not anxious for a sale. In any case in which the parties and the solicitor wish to press for a sale, I think they could have a sale in a shorter period.

2444. Is not there a power in the court to require the parties, when they see an estate before them, to proceed with the sale of it?—Yes; but the court must be moved by some party or other. They used, in the first instance, to write letters to the solicitors, if there was any delay in the proceeding, to know the cause of the delay; but latterly they have had quite enough to do by people pressing without that.

2445. And therefore the solicitors are allowed to take their own course?—Yes, except they are pressed by the creditors.

2446. If it be the solicitor of the owner having the conduct of the sale, and there is no receiver appointed over the rents, it is for the benefit of the owner to put off the sale?—Yes.

2447. Then, if a receiver be appointed, the solicitor must go to Chancery to obtain that?—He must.

2448. Do you see any difficulty in giving to the Court of Chancery a power to sell in that cheap and facile way, with a Parliamentary title?—I do not.

2449. Do they not sell at present in all cases which do not fall within the principle of the Incumbered Estates Court?—They do; the sales are very few in the Court of Chancery, I think.

2450. And yet they get purchasers without a Parliamentary title?—Yes, they can get a purchaser, but whether at the same price is another question; I should think not, by any means.

2451. You are favourable to the transfer of the Parliamentary title to the Court of Chancery?—I am.

2452. You have stated that it ought to be extended likewise to unincumbered property?—I say that I think that is the feeling of the profession; I think that that is a very difficult question, and not exactly one for a solicitor to answer as a solicitor. That is a question more for the Legislature. I have considered the matter very much since I came to London, and I think that unless you can confine the Parliamentary title exclusively to insolvent estates, it must be extended to all estates, because, except an estate be wholly insolvent, the owner of the estate gets the benefit of the Parliamentary title if he gets an increase of the value of the property at all; and I am of opinion that a Parliamentary title does increase the value of property very considerably. I know many men in Ireland who would not lend money at all except upon a Parliamentary title. If any man takes up any of the newspapers containing advertisements for lending money, he will see that money is to be lent upon a Parliamentary title, or that a Parliamentary title is preferred. In my opinion, the time is very near at hand when it will be difficult to deal with any estate without a Parliamentary title if you can get an estate with it.

2453. You think that a question of difficulty and importance which ought to be dealt with more by Parliament?—Yes.

2454. Can you inform the Committee what is the state of the taxing department of the Court of Chancery, which was created two or three years ago, and paid for by the liberality of Parliament?—It is in a very great state of arrear; it is in a very unsatisfactory state.

2455. Before the Bill was carried, three years ago, for the creation of a new establishment and a new staff, I believe the Masters of the Court of Chancery, with all the other business, were obliged to tax all the costs of the Court of Chancery in Ireland?—They were.

2456. Was not it stated to Parliament that it would be an immense relief to them, and would be an improvement in the administration of justice, if a new establishment was created, and officers were appointed, and were well paid for the exclusive business of taxing costs?—I believe so.

2457. How many Masters?—Three, with clerks, for that exclusive business.

2458. How many years would it take to get a bill of costs out of the hands of these new functionaries?—It would take a good while.

2459. If there is a fund in the court to be distributed to expecting creditors, or expecting owners, it will not be distributed till it is known what the costs are?—It prevents the final distribution of the funds in many cases.

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2460. Is the arrear under the reform effected, or supposed to be effected, by the establishment of that office, greater than it was under the old system?—I think it is.

2461. What is the cause of that, which appears to us to be inexplicable?—The Master who taxed the costs before, was generally conversant with the entire proceedings, and he knew the way in which the case was conducted; but these Taxing Masters now will not allow you a single farthing without producing to them a docket from the Master's office, which you have to pay for, for no other purpose than vouching some charge; and then they act under very strict rules, which they adhere to very closely, and you are constantly obliged to go to the Master to enlarge those rules.

2462. Sir *E. Perry.*] Does not that show the reasonableness of the suggestion which you made on the last day, that the Judge might properly tax the costs?—The taxation ought to be given to the Judge in whose court the business is done, or some official employed by him.

2463. Mr. *E. Ellice.*] Has there been any general increase in the business of the Court of Chancery so as to occasion this great arrear in the Taxing Master's office since the taxing was removed from the Masters?—I should say, on the contrary there has been a great decrease, because all the business which has gone into the Incumbered Estates Court was before done in the Court of Chancery, but in different cases in which sales took place in the Incumbered Estates Court, the costs of very old Chancery proceedings came to be paid, and in that way there was a great influx of old business, which came into the taxing office.

2464. Are the taxing officers now supposed generally by the profession to be as efficient as the Masters were for the discharge of those duties?—I am sure that they act according to the rules of the court.

2465. But, in point of fact, according to the experience of the profession, are the present taxing officers found to be as efficient for the discharge of their duties as the Masters were before the appointment of the taxing officers?—I gave my opinion very strongly upon a former day, that it would be a much better system to have the bill taxed by the Judge, who is conversant with the work done by the solicitor.

2466. Sir *E. Perry.*] It is quite clear that the arrears in the Court of Chancery are in the taxing office?—There is a considerable arrear in the taxing office.

2467. Sir *J. Graham.*] Are those dockets which you receive from the Master paid for by the client?—They are paid for out of the funds by the client.

2468. Then they all go to the account of the client?—They do.

2469. And add to the expense?—And add to the expense.

2470. Are there any expedition fees paid in the Taxing Master's office?—No.

2471. Mr. *Whiteside.*] The effort made by Parliament to create a new establishment and a new staff has only made the matter worse than it was before?—I think it has.

2472. Could you give the Committee a notion of the lump sum paid out of the Consolidated Fund for that office?—I have no idea.

2473. *Chairman.*] Was not the old system of taxation by the Masters found to be unsatisfactory?—I do not think it was.

2474. Did you get your bills of costs taxed rapidly?—I never found any difficulty in getting the costs taxed.

2475. Did the taxation of the costs in the Master's office before the alteration, interfere with and impede the more proper judicial business of the Masters?—I do not think it did. Master Litton never taxed the bills of costs, for he said, "I do not understand anything about them;" and I believe that his habit was to pay a man out of his own pocket to tax the costs, and he heard the solicitor afterwards.

2476. Upon any controverted item?—Yes. Master Curry's examiner used to tax his costs for him, and Master Henn taxed his own costs.

2477. The result of your practical experience is, that there was no delay in the taxation of costs, and that it did not impede the other business in the Master's office?—Not materially.

2478. Of course this change which took place was anything but a change for the better?—I think it is proved not to be for the better.

2479. According to the present system, there are three Taxing Masters in the Court of Chancery?—Yes.

2480. And

2480. And they have a different department, and have under them a staff of clerks?—Yes.

2481. Supposing you had three efficient experienced Taxing Masters, with a competent staff, are they capable of doing expeditiously the taxing business of the Court of Chancery?—I think not; but I should explain this; there is but one Taxing Master in the Incumbered Estates Court; if any difficulty of taxation arises there with him, or if he feels that any question arises as to the sufficiency or insufficiency of any item, he at once refers to the Commissioner, who is conversant with the entire duty done by the solicitor, and he comes back with the instructions of the Commissioner, and acts upon those instructions. In the Court of Chancery the Taxing Masters are controlled by strict rules which have been made by the Chancellor and the Master of the Rolls, and they abide by those rules very strictly; they will not act outside of those rules in any way, no matter how beneficial the business done by the solicitor may be; they will say, We have nothing to do with that; and you have then to go to the court, or to the Master, for an express order to them to review the taxation of certain particulars; those orders are constantly made at the expense of the fund; whereas, I think, if the Master had the jurisdiction himself to act in the taxation of costs, it would be a different matter.

2482. One of the defects in the present system is, that the Taxing Masters are bound by rigid rules, to which they rigidly adhere?—Yes.

2483. You have proposed that whatever the newly constituted court may be, there should be a taxing officer in each court?—I think that the costs should be taxed in each Vice-Chancellor's or Master's offices.

2484. Would not a system of that kind necessarily lead, in the offices of the various Judges, to a different scale of taxation?—I think not; no more than any difference of practice in each Vice-Chancellor's Court or each Master's Court. I think they would all be guided by the same principles of taxation.

2485. Sir *J. Graham.*] Is the taxation of the solicitors' bills in the Taxing Master's office more rigorous than it used to be in the Master's office?—I think not; I think you are constantly obliged to go the court for an order. In a case which occurred very lately, the Taxing Master struck off a large sum from a bill of mine; it was a case in which Mr. Deasy was concerned. The Taxing Master said, "It is clear that you should be allowed these charges, but I cannot do it; you must go to the court." I went to the court, and the Chancellor at once gave me an order at the expense of the fund. That added considerably to the expense, and put money into my pocket; but I do not approve of the system. I wish to give them a discretion to allow what a man should get honestly and fairly for the discharge of his duty.

2486. Are those motions that are made to the court made by counsel?—Yes.

2487. And paid for by fees to counsel?—They are.

2488. Mr. *Deasy.*] Is not the taxation in the Incumbered Estates Court more liberal than the taxation in the Court of Chancery?—I do not think it is; it is much more satisfactory, for you are paid there for what you actually do.

2489. Have there not been many complaints among the solicitors and counsel with respect to the mode in which the taxing officers in Chancery have acted upon what you call those rigid rules?—I believe the Chancellor himself has said that he thought they held them too strictly.

2490. Mr. *Fitzgerald.*] You wish not to give a discretion to the Taxing Master in each court, but to give the Masters, or the Vice-Chancellors, a similar power to that which is now possessed by the Incumbered Estates Commissioners, of giving directions to the registrar, or the taxing officers under them, and allowing the costs under their direction?—Yes.

2491. Sir *E. Perry.*] According to your views, the Taxing Master, to do his duties properly, should be conversant with the procedure of the suit?—Yes.

2492. You suggest a registrar sitting under the Master during the whole conduct of the suit?—Yes.

2493. His duties would be to take down the decree or order of the Judge from time to time, and during the rest of the time he would be merely observing what was going on in the suit?—Yes.

2494. His time might be very well occupied, therefore, with what he should do hereafter in allowing the different items of costs?—Yes; and in any question of difficulty there should be a reference to the Master by that officer.

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2495. Have you any practice in Ireland analogous to that of the criminal courts in England, where there is a clerk of assize?—The assistant barrister in Ireland taxes the costs.

2496. That is quite analogous to the procedure you approve of?—Yes.

2497. Mr. *Grogan.*] The Honourable Member for Enniskillen called your attention to the reform that was made some years ago in the Court of Chancery, relative to the taxation of costs, and I understood you to say that the delay consequent upon that reform was rather greater than that which existed before the reform?—Yes, I think so.

2498. Upon the subject of the expense of a particular bill of costs, do you consider that the expense is greater, or equal, or less now than it was under the old system?—I do not think there is any practical difference in the expense of taxation; there is a heavy Chancery stamp.

2499. You have described, that it is necessary in many cases to apply for a special order to the Chancellor, and that that expense falls upon the costs?—Yes.

2500. Taking those cases into account, is there any difference?—Yes, in those cases there is.

2501. Mr. *Whiteside.*] Is not taxing costs almost a science of itself; what is called drawing the costs?—Yes.

2502. Is it not the fact that professional men employ trained and skilled agents in the art and science of expanding a bill of costs?—I do not know; I never employed anyone to do so but one of my own clerks.

2503. Would it not require a man thoroughly skilled in the business of the court and in the practice of solicitors, and in the charges which they are entitled to make, to tax efficiently and promptly a heavy Chancery bill of costs?—Yes, it would, of course.

2504. And would any reform which the wit of Parliament could devise be able to facilitate the administration of justice unless the men who are to carry it out are thoroughly competent to do their work?—Of course not.

2505. Mr. *Deasy.*] Is not it a science with which barristers are peculiarly unacquainted?—I think it is; but, however, barristers have usually been allotted to all those situations notwithstanding.

2506. Mr. *Whiteside.*] Are they qualified to fill them?—I think they are in many respects, because the principles of taxation are a matter quite coming within the profession of a barrister; he probably is quite competent to decide upon principles of taxation, but he usually knows nothing of details. I think an intelligent solicitor would make the best taxing officer.

2507. *Chairman.*] In the whole of the taxing department there are two barristers and four solicitors?—Yes.

2508. Mr. *E. Ellice.*] In the Court of Chancery are the three Taxing Masters barristers or solicitors?—There is one barrister and two solicitors.

2509. Viscount *Monck.*] Have you any idea of the relative amount of work performed in the last three or four years by the three Taxing Masters in Chancery, or in the Incumbered Estates Court?—I should think that the Taxing Master in the Incumbered Estates Court gets through a great deal more business than either of the three Taxing Masters in the Court of Chancery.

2510. Mr. *Whiteside.*] Would this be your remedy for the above. To abolish those officers who were created a couple of years ago, give them compensation for the remainder of their lives upon the Consolidated Fund, and appoint a new set of officers to do the whole work?—That would not be my course at all. I have nothing to do with the Consolidated Fund. Of course, if those gentlemen are superannuated, and their services are dispensed with, they should have pensions and salaries for the rest of their lives, and I think it would be very improper if they did not have them; but I would not create new officers. I would attach that duty to one of the officers in the Master's office.

2511. If there were three Masters continued, you would attach one of those gentlemen to each court to tax the costs of the proceedings under his own eye?—I would not attach one of the present Taxing Masters; I stated before that I think each Master should have a registrar and a chief clerk. I would give to one or other of those officers the taxation of costs in that particular Master's office.

2512. Your answer to the Honourable Member is, that supposing there were three Masters or three Vice-Chancellors, you would tax the costs by an officer of each court attached to the court, and of the existing establishment you say nothing?—That is my individual opinion.

2513. May I take the liberty of inquiring whether, under the 15th section of Sir John Romilly's Act, the small business of the Court of Chancery has not very much increased?—Yes, it has.

2514. Has not that Act tended to facilitate the despatch of business, and has it not improved the administration of justice in so far as it applies?—Yes, I think it has.

2515. Has it not increased the business in the Master's office largely?—Yes.

2516. But their staff has not been increased?—No. In my opinion they have always had an insufficient staff.

2517. In so far as those gentlemen have a judicial power, what is the opinion of your profession, and what is your own opinion, with your experience, as to the capacity, and diligence, and promptitude with which they have disposed of that business?—We think that the Masters have disposed of the business in a perfectly satisfactory manner, and that all that is wanting is to give them some extended jurisdiction.

2518. And a better staff?—Yes.

2519. Sir *E. Perry.*] With regard to the Court of Appeal, which is now exercised by the Commissioners, the Committee understand that an appeal from the decision of any one Commissioner goes to the three Commissioners?—Yes.

2520. What is your opinion with regard to the operation of that appeal?—There is an appeal to the Privy Council.

2521. That is an ultimate appeal?—Yes; as far as I have ever heard, that ultimate appeal has been considered a most satisfactory tribunal. The Judges who compose that court appear to possess the perfect confidence of the profession and of the public.

2522. Is it the practice that solicitors conduct all the business before the Commissioners?—No; you constantly have counsel, but you are not allowed the expense except the Commissioner certifies that it is a fit case in which to employ counsel.

2523. What is the practice with regard to the appeal before the three Commissioners?—Counsel always appear.

2524. Would it be desirable if the Commissioners were transferred to the Court of Chancery, to do away with that appeal?—Yes, I would have but one appeal; I would not have an appeal from one Commissioner to three.

2525. Does not that appeal operate much in the same way that an appeal from a decision at Nisi Prius to the full court operates?—I should think it does.

2526. Is not the effect of such an appeal very often to settle a case at once, without the expense of going to a higher court?—Sometimes; but I think that it would rather increase the expense, but you would have but one appeal according to my system, and there would be two appeals according to the system which you propose.

2527. Is not that first appeal to the three Commissioners a much more inexpensive matter than appealing to a new court?—Almost the only expense of either appeal are the fees to counsel; but in an appeal to the Privy Council the fees are higher; but I think the expense would not be much higher if it was an appeal to a court sitting at the Four Courts.

2528. The subject matter is altogether new to the upper court of appeal, whereas to the three Commissioners, who are conversant with the subject matter, very little information in the way of a brief is required to be given by counsel?—The expense of any appeal is very cheap; there is not supposed to be any additional brief in the case of any appeal; the only expense are the fees to counsel.

2529. On the whole, you think that it would be prudent to do away with it altogether?—Yes.

2530. Mr. *Whiteside.*] Would it not be more convenient to have the court of appeal in Chancery in a court on the spot?—Yes.

2531. In order to save the trouble of going to the Privy Council, which is at a distance?—Yes.

2532. Can anything be more inconvenient to the suitors and the profession, and the administration of justice, than to have the court at one part of the town, the Privy Council at another part of the town, and the Court of Chancery at another?—Yes; but there is no place for them to sit at present.

2533. In the preparation of the title for the sale of an estate in the Incumbered Estates Court, is it the practice to get the opinion of counsel upon that title?—

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title?—It is generally the case; whenever you apply to the Commissioners, if the case is at all one of difficulty they will mark the title to be sent to counsel.

2534. Mr. *Deasy.*] Is it not one of their rules that that must be done?—It may be for the last two years. I have always known it done.

2535. Mr. *Whiteside.*] When the Commissioners mark a title to be sent to counsel, or, as the honourable and learned gentleman says, the rule of the court requires it to be done, who selects the person to whom that is to be sent?—The solicitor.

2536. Do you send it to whom you please?—I should select anybody I pleased.

2537. Does it so happen that a great number may be sent to any particular counsel?—I do not know. I have always selected my own counsel.

2538. *Chairman.*] You are quite at liberty to do so?—Yes.

2539. Mr. *Fitzgerald.*] With reference to the power which you propose to give to the Masters acting as Vice-Chancellors and as Judges, of hearing a suit from the beginning to the end, do you propose to extend that power to any class of cases which they are not now able to deal with under the 15th section of Sir John Romilly's Act?—I think I said the other day that I would not. I think that is a matter deserving of very serious consideration.

2540. In reference to the opinion given by Dr. Longfield, do you think it an advantage that the Commissioner should be present, and preside at the auction of estates, or do you consider that so entirely a ministerial duty that you would give it to a subordinate officer?—On the contrary, I read Dr. Longfield's evidence on that subject with some surprise; I should say that it is most important that the Commissioner should preside at the auction. One of the principal things is to see whether the bidding is fair; at present they constantly adjourn the sales in consequence of an insufficient bidding; I cannot imagine how you can dispense with the Commissioner at the auction.

2541. If the Commissioner himself is not present, and the auction is left to a subordinate officer, would it not be the case that there would be constant applications to the court to re-open biddings on account of their insufficiency?—I think there would be a great sacrifice of property, or else the rules of the court would so far have to be altered.

2542. So as to enable a party to have the biddings re-opened?—Yes.

2543. Mr. *De Vere.*] Would not the only way to avoid that be to put an upset price for the biddings of each lot, and would not that tell against the sale of the property?—I think that it would then probably cease to be an auction.

2544. Mr. *Deasy.*] Is not it in the Court of Chancery, at least, a part of the duty of the Master not to allow the solicitor, or the person having the carriage of the proceedings, to bid for or become the purchaser of the estate?—Yes, without a special order of the court, and so it is in the Incumbered Estates Court.

2545. Has not that practice been departed from in many cases in the Incumbered Estates Court?—I do not know; it is nearly a matter of course to get leave to bid in the Incumbered Estates Court.

2546. In Chancery it is quite the reverse?—In Chancery you could get leave upon the terms of the carriage of the proceedings being handed over to some independent third party.

2547. And always satisfying the Court that you are the person interested in the sale?—Yes.

2548. Mr. *Fitzgerald.*] Is the opinion which you have expressed as to the propriety of the Commissioner himself presiding at the auction generally entertained by the profession?—I do not know.

2549. Mr. *Whiteside.*] With reference to the Court of Appeal which is proposed to be established, have you seen the name of the person whom I have put into my Bill?—I do not recollect.

2550. Could any Judge be suggested more likely than Lord Chief Justice Blackburn to have the confidence of the public?—I should think not; I never heard a second opinion of Lord Chief Justice Blackburn's capability. I do not believe that it was ever questioned.

2551. You gave the opinion that one Vice-Chancellor could never do the business of the Court of Chancery?—He could not.

2552. Mr. *Fitzgerald.*] With regard to the suggestion of Dr. Longfield, you disagree with it; you think it absolutely necessary that the Commissioners should preside at auctions?—I think you must either make the rule that every estate shall

shall be sold for whatever is bid for it, or not under a certain number of years' purchase, or you must give the officer some discretion as to adjourning sales or not, similar to that which is exercised by the Commissioner.

2553. Could such a discretion be safely entrusted to a subordinate officer?—I think it ought not to be.

2554. With reference to the other duties which are performed by the Commissioner, can you suggest any part of the duties which are now performed by him which could be safely transferred to a merely subordinate officer?—I think, taking Dr. Longfield's office, the practice adopted there is quite correct, and very little that is not done by his examiner could safely be entrusted to any chief clerk. He compares the abstract of titles with the deeds. It is then sent to counsel; the Commissioner reads the title and becomes familiar with every detail of the whole transaction. Directions for searches are then made out under the Commissioner, and given to the solicitor by the examiner. The solicitor then sends in to that examiner the schedule of incumbrances, and it is the examiner's duty to see that everything appearing upon the searches is noticed upon that schedule of incumbrances, and he settles that, and sees that it contains everything that it ought to contain, and sends it in to the Commissioner, and the Commissioner has nothing to do but rule all legal questions of priority and otherwise.

2555. In fact, in your opinion, neither as regards the auction, nor as regards any other part of the proceedings in the case, would it be advisable to hand over to a subordinate officer those duties which are now performed by the Commissioner?—I think not, except that I would give the Commissioners also a registrar, for the purpose of taking down their orders, and they should not employ their time in writing out fiats for payment of money, and things of that sort. That should be done by the registrar, and the Commissioners should merely sign those things.

2556. I understood you to suggest that there should be two Title Masters, who should perform the duty now performed by the three Commissioners?—Yes; or probably at present three, if you transferred the arrears.

2557. Did you state that it would be absolutely necessary to provide accommodation for those new officers, in order to bring them down to the Four Courts?—Yes; and especially for all papers connected with the Incumbered Estates Court.

2558. Looking at it merely as an absolute practical physical difficulty, it would be impossible to carry out the reform which is at present proposed, until accommodation was provided in the immediate neighbourhood of the Four Courts?—I think it would be perfectly impossible.

2559. You expressed an opinion that even if no additional business is put upon the new Vice-Chancellors in respect of the sale of unincumbered estates, it would be impossible for them to take the present arrears and the present business in the Incumbered Estates Court, and also to take any part of the business at present transacted in the Court of Chancery?—I think so.

2560. That is the opinion of the profession too?—Yes.

2561. Of course, if such a proceeding were adopted, it would necessarily lead to the utmost confusion?—Yes.

2562. Still more that would be the case, if the business is increased by extending the power of the Incumbered Estates Court to unincumbered property?—Yes.

2563. Mr. *Grogan.*] Would your opinion generally be, that an increase of judicial power, rather than an increase of staff, would be desirable?—Yes; and I think that that is the opinion of the profession, that there should be more Judges and fewer clerks.

2564. Mr. *Henley.*] You have stated that for the last two years it has been the practice of the Incumbered Estates Court to require the titles to be submitted to counsel before they deal with them?—Yes.

2565. To what extent is that submission to counsel carried as to clearing up the title?—The whole title is submitted to counsel for his opinion.

2566. Upon defects being pointed out, is it required that any means shall be taken to clear the title before it goes into court?—When you get back the opinion of counsel, suggesting any difficulties in the title, it is the duty of the solicitors to make further enquiries; they look for further documents, and draw up a short supplemental title remedying those defects.

2567. Then it goes back to counsel?—Sometimes it does not; that depends upon

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upon the nature of the case; very often you send in that to the Commissioner himself.

2568. This, in point of fact, puts the thing in a plain state before the Commissioner, almost with a judicial opinion upon it?—Yes.

2569. That, therefore, very much lessens the technical part of the labour of the Commissioner as a conveyancer?—I do not know how far the Commissioners rely upon the opinion of counsel.

2570. So far as it goes, the title being cleared up in this way must necessarily bring it before the Commissioner's notice?—Yes.

2571. And so that very much facilitates the progress of his business?—Yes, I should think so.

2572. Mr. *Grogan.*] You have suggested the establishment of two Title Masters; from your knowledge of the Bar of Ireland, would there be any difficulty in acquiring competent men for that purpose?—Not the slightest.

2573. Mr. *Henley.*] Who pays for the expense of submission to counsel?—The estate.

2574. Mr. *Fitzgerald.*] There is one part of the Attorney-general's Bill which refers to the sale of settled estates; what is your opinion upon the subject?—I should certainly strongly oppose that; I think that it would be a very unwise provision indeed.

2575. Would it not be the case in some instances that there would be a great facility for fraud?—Yes; and breaches of trust in reference to money are very frequent indeed in Ireland, and if you convert a settled estate into money the husband will often get the produce of the estate.

2576. And by death the whole control of the money may be left in the hands of one trustee, and that will afford a very considerable facility for fraud which does not exist in the case of a landed estate?—Yes.

2577. Mr. *Whiteside.*] Suppose the case of a tenant for life, or suppose that a party purchases an unincumbered estate from his ward, just come of age, or a father purchases an estate from his son, the purchaser imposes upon the Court; he gets that bit of parchment from the Commissioners, and there is no redress?—I did not think that the Bill gave that power; I do not think it is possible that the Court could be imposed upon to sell an estate at the instance of a tenant for life.

2578. It is the interest of the buyer to get the property; it is the interest of the seller to sell the property; suppose that they between them contrive to impose upon the Court, the Parliamentary title still gives the property to the wrongdoer if he gets it?—Yes; but if the settlement creating a tenant for life be registered, that would be an impossible thing.

2579. Have you not known many instances of important deeds not being on the register?—Yes.

2580. Sir *E. Perry.*] In a court of equity the proceedings are vitiated *ab initio*?—A registered deed would take the place of an unregistered deed.

2581. If there is fraud practised upon the Court the act of the Court is inoperative?—Yes.

2582. The Act for giving a Parliamentary title does not confer upon the Commissioners jurisdiction to sell the estate for life absolutely?—No, it does not.

2583. Mr. *Deasy.*] With respect to the proceedings for the sale of unincumbered settled estates in practice, would there be any one appearing before the Court to represent the interests of those deriving under the settlement?—There might not be any one appearing for those who were beneficially interested; the beneficial interest might be in a minor or an unborn child.

2584. Would not the course of proceedings be this: the tenant for life would present a petition for the sale of the estate; he and his solicitor would have the conduct of those proceedings, and there would not be in those proceedings, or there need not be, any intervenient party representing interests adverse or different from theirs?—I think there would scarcely ever be.

2585. There would be no one to employ a solicitor?—There would be no one to employ a solicitor.

2586. *Chairman.*] Have you read Part 6 of the Bill?—Yes, and I have formed a very strong opinion against it.

Mr.

Mr. *Richard King*, was called in; and Examined.

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2587. *Chairman.*] YOU hold a situation in the Court of Chancery in Ireland?—I do.

2588. What is that situation?—I am assistant clerk in the office of Master Henn, the Senior Master.

2589. How long have you held that office of assistant clerk?—Upwards of 40 years.

2590. What age were you when you were appointed to the office?—Sixteen.

2591. Will you explain to the Committee what your particular duties are as assistant clerk, according to the present system of the Court of Chancery?—I have to receive and file all the documents that are received in the office, to enter them in different books, and to attend parties requiring the inspection of them from time to time. I have the arrangement of the copying of all the documents that are bespoken. I receive all the cash, keep an account of it, and enter it in a book. I issue summonses; I enter the summonses that are issued for proceedings before the Master, and notices also for the same purpose. The Master has to sign a great many certificates, the greater part of which are compared and checked; and in some of the offices they have to check approbations of transfers of stock for the signature of the Master; reports and orders made up in the office are compared, and receiver's accounts preparatory to being passed are lodged in the office, and entered in a book. In the Master's office the following books are kept: a cash book and a receiver's book for entering the receiver's accounts, three summons books for entering the attendances, a pleading book, a book for entering orders, and a sale and letting book. Then there is the preparation of the Master's day lists of the business to be brought before him, the selecting and arranging his papers, and replacing them when he has done with them. All the duties are supposed to be the duties of the examiner or chief clerk, but those that I have mentioned are generally performed by the assistant clerk.

2592. Your duties are purely ministerial in reference to those documents, and you do not attend in the Master's chamber when he disposes of business?—No, I do not.

2593. Therefore you have no means of giving the Committee any information as to the course of procedure in the chamber of the Master, where he sits and disposes of business?—After such a number of years, I am intimately acquainted with it; but I do not hear the arguments of counsel. I am backwards and forwards in the Master's chamber continually.

2594. Mr. *Whiteside.*] You have been 40 years in the Court of Chancery; have you entertained yourself through your life in noting down occasionally the abuses in that court?—I have observed them very closely.

2595. Had you the honour of some interviews with Sir John Romilly when he framed the Chancery Regulation Bill?—I had that honour. I was over here a humble petitioner, and he did me the honour to receive many suggestions from me.

2596. During your forty years' service, what is the utmost salary that you have reached?—£. 200 a year, and that only since the passing of Sir John Romilly's Act.

2597. Mr. *Grogan.*] What was your salary previously?—The salary attached to the office previously was only 70 *l.* Irish; but there were some profits arising from writing which made it not much short of 200 *l.* a year; but the amount was fluctuating.

2598. Mr. *Whiteside.*] Have you any other emoluments besides the 200 *l.* a year?—None whatever.

2599. You have devoted your entire time to that situation; have you ever been absent in your life?—Very little indeed. I believe that for the 40 years I have been in the office, with the exception of the time when I was in London about the Bill, in 1850, if all the periods that I have been absent were put together, they would not amount to three months.

2600. Are you perfectly acquainted with the working of that useful measure, the Chancery Regulation Act?—I am.

2601. Are you acquainted with the operations of the changes carried out in the Court of Chancery before that Act of Sir John Romilly's?—I am perfectly acquainted with those changes.

2602. Was the effect of those various changes, irrespective of your opinion of

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their value, to increase the work in your office?—The first great change took place in 1823, when the Chancery Act of that year passed, and from that period down to 1850 there have been a great number of changes, the effect of every one of which was to increase the business in the Master's office.

2603. But the crowning effect was produced by Sir John Romilly's Act in making the Masters judicial in a great variety of cases?—That was the greatest reform effected in my time for the benefit of the client.

2604. That reform having been so carried out, and it having introduced a great quantity of additional work into the office, was any change made in the staff?—No.

2605. Has there been since that time an enormous amount of business satisfactorily transacted under that last Act?—Yes.

2606. What is the quantity of work done in your own office?—I find, in the first instance, that the number of days of sitting of the Masters exceeds anything of the English Vice-Chancellors. I have seen a return published some two or three years ago, in which it is stated that the greatest number of days in a year that any Vice-Chancellor in England sat was 189; the number of sitting days of the Masters in the Court of Chancery in Ireland is about 230; the number sometimes varies a few days. The number of days that Master Henn sat in the year 1855 was 213. He lost some few days by illness.

2607. How many hours a day did he sit?—During the sitting of the Court the hour is from 11 o'clock till four. In the vacations it is shorter; it is then from 12 till three; but the Masters sit a great deal more than the legal and necessary hours.

2608. They take papers home with them at night, do they not?—Yes; I am often astonished at the quantity of papers that Master Henn brings in the morning, which I give out to the solicitors.

2609. What number of causes has he heard in the year?—In the description of business called short causes, the number is 1,492 in the year.

2610. Were they all disposed of?—Each of them does not represent a cause; it represents an attendance before the Master for some particular object, with a decision upon it.

2611. *Chairman.*] Do you mean that there were 1,492 distinct causes?—No, I do not; there were 1,492 attendances called short causes.

2612. Mr. *Whiteside.*] And decisions upon those facts, whatever the question was, submitted to him?—Yes.

2613. What other causes has he heard?—There have been 468 attendances in long causes.

2614. What was the number of long causes?—215.

2615. Did he conduct those causes from the beginning to the end virtually?—They are composed, a great many of them, of 15th section cases, which he did hear from the beginning to the end; but they are also composed of old cases, and all the miscellaneous business of the office.

2616. Is this the evil of your system, that, so far as cases coming under the 15th section of Sir John Romilly's Act are concerned, the Master disposes of the whole of them judicially from beginning to end, but in the other cases you have the old system of references and reports?—Yes.

2617. And so much time then is lost in the drawing up of those reports of cases that do not fall within the principles of Sir John Romilly's Act?—A great deal of time is lost, and a great deal of expense is incurred.

2618. Is that description of business in the Master's office not only wasteful of his time, but also wasteful of the suitor's time and his money, by the system of reports and references?—In reference to the difference between the expense of 15th section cases, and the expense of the general cases, there is certainly a waste of both time and money.

2619. Would that waste of time and money be saved by giving to the Master, if he were competent to undertake it, the same jurisdiction in those excepted cases which he has under the 15th section of Sir John Romilly's Act?—I think it would.

2620. Did you state the other business which the Master had during the last year?—I have stated the general outline.

2621. How many receivers had he to manage besides?—There are 374 existing receivers in Master Henn's office.

2622. Is that irrespective of the receiver department altogether?—Altogether.

2623. Attached

2623. Attached to each Master, irrespective of the Receiver Master, is there anything like that number of 374 receivers?—The printed return shows that Master Brooke has 463, Master Litton 356, Master Murphy 318, and Master Henn 374 receivers to manage.

2624. Sir *J. Graham.*] Has Master Lyle 1,100 besides?—The printed return states that he has 723.

2625. Mr. *Whiteside.*] Has the Master, irrespective of his judicial and ministerial business, to investigate the accounts of those receivers, to direct them as to the management of the estates, and to overlook the whole of their control over the properties involved in those accounts?—He has; but the summonses for that purpose are included in the amount of summonses which I stated generally.

2626. Has he to do that receiver business?—He has.

2627. It would be a mistake to suppose that the Receiver Master had anything like the entire of the receiver business of the Court of Chancery?—He by no means has it all; he has only about one-third of the whole of the receiver business of the Court of Chancery.

2628. From your observation, you have seen for forty years of your life a great deal of this business, do you consider that this receiver system is full of abuses?—It is, if you call them abuses; it is a bad system.

2629. Is it an expensive system for the management of property?—Very.

2630. What is the per-centage, as far as you can form an honest and fair opinion?—I am afraid I could not state. In the first place there is always five per cent. paid to the receiver for receiving, and then it depends upon a variety of circumstances what the cost may be; in some small cases there might be five, or six, or ten per cent. to add to that, or it might be a great deal more.

2631. The management of an estate might amount to 15 or 20 per cent.?—It might.

2632. Has not that very often been the case?—I know an instance of an estate of 400 *l.* a year, from which, after being 10 years under the management of the Court of Chancery, there was not a shilling received by the creditors.

2633. *Chairman.*] Will you state the name of that case?—It is a very old case, and probably is not quite applicable to the present day; it is more than 20 years ago; it was the case of Nugent *v.* Nugent; it was a leasehold interest, and the lease, I heard, was evicted for the non-payment of the head rent.

2634. Mr. *Whiteside.*] You heard the complaint made, that the estate having been 10 years in the Court, there was no money for anybody?—Yes.

2635. *Chairman.*] Did that arise from the fault of the receiver, from his not answering for the money that he had collected?—No.

2636. Did it arise from the fact that the fund which he had got in was insufficient to meet the head rent?—It arose from the fact of the opposition of the inheritor, who obstructed him in every way; the tenants were in combination; between that and the costs incurred in proceedings to recover the rent, the fund was wasted.

2637. In fact the receiver had nothing in his hand to pay the head rent, and the lease was evicted for non-payment of it?—Yes.

2638. Mr. *Whiteside.*] Was not there, in those times, in the first place a receiver, then the solicitor for the receiver, then the plaintiff, and the solicitor for the plaintiff, the defendant the inheritor, and the solicitor for the inheritor?—There would be at the present day; all those parties would be represented by solicitors.

2639. In the proceedings in the Master's office, in the receiver's business, would all those several parties have a right to appear before him?—They would have a right to appear before him, but not to get their costs out of the fund; that would be a question at the ultimate hearing.

2640. *Sir J. Graham.*] The tenants, while there is a receiver upon the estate, only hold till a limited period?—Seven years, pending the cause, is the usual term.

2641. Will you explain what is the tenancy by which occupiers hold, while there is a receiver upon the estate?—If a receiver is appointed over an estate where there are existing leases made by the owner, those leases are all held good, but any lands that fall out of lease pending the receivership, are let for seven years pending the cause. That is, if the cause lasts for seven years, the lease holds for that period, and they relet at the end, but if the cause terminates in six or twelve months, the lease terminates with it.

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2642. Then nothing can be more uncertain than the tenure of a tenant in Ireland, where the estate is under a receiver?—Nothing is more uncertain, where the letting is by the court.

2643. What is the effect of that uncertainty upon the cultivation of the soil?—The tenant generally endeavours to get as much out of the land as he can in the period, and very frequently leaves it in a bad state.

2644. If it lasts seven years, by the end of seven years the estate is impoverished to the very last degree?—Yes, sometimes, with bad tenants, it would be so; but with good tenants the land would, in all probability, be improved.

2645. Would not a good tenant become a bad tenant under such uncertainty?—If he is a poor man living on his labour, he might do so; but sometimes the land is taken by extensive farmers; and if the tenant be a good one, he may leave the land in as good a condition as he found it.

2646. If he were, a prudent man, would he venture to lay out his capital upon a farm upon a tenure so uncertain as that, not exceeding seven years, unless the suit should terminate?—If the tenant does not keep the land in good condition, and the suit holds seven years, he will lose by it the last two or three years. He must keep the land up to a certain condition to get anything out of it, for the whole period; and some tenants look for a renewal of their tenancy.

2647. Mr. *Whiteside.*] What will he do the last year?—If he expects to get the land again, he will take care of it.

2648. Sir *J. Graham.*] Is not the effect of receivers very generally thought to be highly injurious to the cultivation of the soil, and the character and conduct of the tenants?—Extremely so. Prior to the year 1828, the tenancy under the court was only three years, and the lands were always let by public auction at the end of that time, and it was perfectly seen that in the case of any estate remaining many years under the court, every re-letting produced less rent.

2649. This appointment of receivers arises very much from judgment debts, does not it?—It does.

2650. Was not some check imposed a few years ago, with reference to the amount under a judgment, in which a receiver should be appointed?—Yes.

2651. What was that limit?—£. 150.

2652. Does that limit subsist now, or has a subsequent enactment changed the limitation?—That limit still subsists; but it is, I believe, evaded by converting a judgment into a mortgage, and getting a receiver then.

2653. When was that conversion legalised?—It is only a few years.

2654. Are you able to form an opinion of what was the immediate effect of the limitation while it subsisted; did it check the appointment of receivers during the short time that it was in operation?—It must have checked it; but I cannot say that there was any visible diminution in the number of receivers.

2655. Not during the short time that the limitation of 150 *l.* existed?—No.

2656. Has there been any sensible increase since the conversion of the judgment into a mortgage took place?—That I cannot so well speak about; for now the receivers are appointed, not as they were before, but by the Receiver Master, and I cannot speak as to whether there is any greater number appointed now.

2657. Did not you just state that the appointment of receivers was common to all the Masters; will you explain that?—The Masters, in 15th section cases, at present make orders for the appointment of receivers; but the receiver, when a Master makes an order for his appointment, is appointed by the Receiver Master; and in general cause petitions the order for the appointment of the receiver is made by the Master of the Rolls.

2658. The Committee has been informed that eighteen millions' worth of incumbered property has been sold in Ireland since the establishment of the Incumbered Estates Court; has there been any perceptible diminution in the number of receivers since that amount of property was sold?—There has certainly been a diminution.

2659. Can you give the Committee any comparison of the number of receivers in Ireland in 1845, and the number of receivers in 1855?—I could not tell the number; I can state the number of the accounts that were passed in the different years. In the year 1848 there were passed in Master Henn's office 298 accounts. That number does not represent the number of receivers; probably there were 100 receivers in the office besides that.

2660. *Chairman.*] Those receivers may have been for many years acting over the estates?—Yes; we have one case in which the receiver was appointed so far back

back as 1810 or 1811, and he is still acting. In the last year there were 233 accounts passed.

2661. Mr. *Whiteside.*] What is the difference between 1848 and last year?—There were 65 less last year.

2662. Sir *J. Graham.*] Is it not the case, that sometimes the receiver remains a long time on the estate, and at other times there are frequent changes?—I do not think it is usual; occasionally receivers misconduct themselves and are discharged, and occasionally they die.

2663. Does not the Master change the receivers frequently?—No.

2664. Never?—It would be attended with a great deal of expense. The discharge of a receiver and the appointment of a new receiver would cost 10 *l.* or 12 *l.*

2665. Who would pay for it?—The funds.

2666. If there are adjacent estates under receivers, is the convenience of appointing one receiver for several estates considered, or is there a separate receiver for each estate, though the estates are adjacent?—One of the improvements in the practice of the present day is, to look out for a receiver in the neighbourhood, and appoint him; but each appointment is separate and distinct.

2667. Mr. *Fitzgerald.*] Has not great improvement taken place in the system by the appointment of district receivers, particularly in Master Lyle's office?—That is the improvement to which I allude. The country is not divided into districts, but he endeavours to form districts by grouping them.

2668. Sir *J. Graham.*] If I were to tell you that an estate sold in the Incumbered Estates Court had had seven different receivers in 10 years before the sale, would you believe such a thing possible?—I never heard of such a case.

2669. *Chairman.*] Supposing a judgment creditor gets a receiver appointed, and his judgment is paid off, the order drops to the ground?—Yes.

2670. And then if another creditor comes and asks for a receiver, he gets a new order, and appoints a new receiver?—Yes.

2671. And if he is paid off, the same thing goes on?—Yes.

2672. Since Master Lyle has undertaken the duties of the Receiver Master, the new receivers are nominated in his office?—Yes, in all new cases.

2673. So that the business in his office at present would represent the receivers in all new cases?—It would.

2674. You have told the Committee that 723 is the number of receivers in Master Lyle's office?—Yes.

2675. It is stated in this Return which I hold in my hand, "Number of receivers, sequestrators, guardians of minors, and committees of lunatics managing estates, the business whereof is in Master Lyle's office, in the year ending 31 December 1854, 723; of this number, several no doubt have been discharged, and others have never entered into receipt of the rents, the debts having been settled; but such cases cannot be distinguished as the orders or documents showing this are not regularly brought into the office. Number of accounts passed, certified, and filed in said period, 414." Would not that number of 414 more accurately represent all the receivers in Master Lyle's office than the number of 723?—No, I think not.

2676. Is not the receiver bound to account every year?—Yes, he is, but he does not do it; and in many cases where the estate is small, it is very usual to make the receiver account only once in two or three years.

2677. Whether the number is 723 or 414, that would represent all the receivers in new cases; all the new cases go into Master Lyle's office?—They do.

2678. And those which are attached to the other Masters' offices are old receiverships, that existed before Master Lyle became Receiver Master?—Yes.

2679. The receiverships that existed before 1851?—Yes.

2680. So that the number of 723 or 414, in Master Lyle's office, represents the new business since 1851?—It does.

2681. Mr. *E. Ellice.*] Do the duties of a receiver cease without a formal discharge by the court?—When an estate is sold by the Incumbered Estates Court, they get what is technically called a side bar rule, which discharges the receiver off the estate, but the duties of the receiver as the officer of the court, unless he is removed, do not actually cease, nor his responsibility cease.

2682. But if he gets that side bar rule, he is removed from the roll of receivers in the Master's office?—Sometimes it happens that he is not, because

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there is no obligation upon him to bring that rule into the Master's office, and he may be on the Master's books, although not in receipt of the rents.

2683. Sir *J. Graham.*] The power of the receiver over the tenantry is as great as that of the owner; he represents the owner, does not he?—I do not think he does; I think that is one of the great evils, that he has not the same power as the owner.

2684. Not as to controlling the cropping?—He has no power as to the cropping.

2685. What are his powers over the tenantry, besides the exaction of rent from them; if there are leases, for instance, providing for a certain rotation crop, can he enforce that, or does he enforce it?—I do not think it is usual to put those terms into leases generally in Ireland, but he would be bound to enforce any right that the owner possessed.

2686. His principal duty is to exact rent?—It is.

2687. And if he obtains the rent, he gives the tenant great latitude as to his crop?—A great deal depends upon the receiver; some receivers are very attentive to the land, others are careless.

2688. Do not changes of receivers upon an estate interfere materially with the certainty of the tenant, and with the course of his cultivation?—Yes; that is most injurious.

2689. And frequent changes, bad as the system of receivers may be, add to the evil?—Considerably.

2690. Mr. *Fitzgerald.*] A receiver has no discretion to authorise an expenditure of money for draining, and such like improvements, without the authority of the Master?—No; nor have the Masters any authority to authorise it except in the case of small sums, where there is an imperative necessity.

2691. Sir *J. Graham.*] The receiver is the agent of the creditor, and not the agent of the owner; his first duty is to look to the interest of the creditor, is it not?—His first duty is to get as much money as he can out of the land.

2692. That is a duty which he carefully performs?—Not always; I have known a great many instances of complaints made against receivers; it is a very common complaint made against receivers, that they do not do so.

2693. When an incumbered estate is brought into the court for sale, and there is a receiver upon it, has not the receiver the power, before the sale is effected, of taking notes from the tenants for arrears of rent?—The Court of Chancery does not countenance receivers taking notes at all.

2694. In the case of a sale effected in the Incumbered Estates Court on account of incumbrances, the receiver upon the estate knows that the sale is impending; has he not the power, on behalf of the creditors, of obtaining notes from the tenants for outstanding arrears?—The receiver is an officer of the Court of Chancery, and the Court of Chancery does not countenance a receiver taking notes; he may do it, but he does it at his own risk.

2695. Mr. *Fitzgerald.*] If he takes a note, and the money is lost, he would be responsible for it?—Yes, he would be responsible for it, were it known he had done so.

2696. Sir *J. Graham.*] If he has taken notes, and the purchaser buys the estate in the Incumbered Estates Court with a Parliamentary title, being ignorant of the notes so taken, he will buy the estate with a Parliamentary title, but with arrears of rent secured by notes previously obtained?—That would be the effect, if it were done; but I think that it is not the case.

2697. Has no such case occurred in Ireland?—I never heard of it.

2698. Mr. *Fitzgerald.*] The Incumbered Estates Court sells the arrears of rent upon the estate?—I have heard that they do.

2699. *Chairman.*] Have you known instances in which estates have been sold in the Incumbered Estates Court where the receivers have managed to get decrees for an arrear of rent against the tenants?—I have not known of such cases, but I think it is very possible that they may have occurred.

2700. Mr. *Whiteside.*] Was the receivership, in which Mr. Reamsbottom was concerned, in your office?—I think so. I am certain that there is a case in our office in which Mr. Reamsbottom is the receiver.

2701. Are you aware that he was fired at lately, as he was walking home?—I saw an account of that.

2702. *Chairman.*]

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2702. *Chairman.*] Have you seen a Return to the House of Commons, moved or by Mr Whiteside, dated the 17th of May 1855, with regard to the number of receivers in the different Masters' offices?—I have.

2703. According to the means of information which you possess, can you state whether it is substantially correct?—I think it is. (*The Return was delivered in.*) *Vide* Appendix.

Lunæ, 5° die Maii, 1856.

MEMBERS PRESENT.

Sir James Graham.	Viscount Monck.
Mr. Fitzgerald.	Mr. Kirk.
Mr. De Vere.	Mr. Deasy.
Mr. Macartney.	Mr. Grogan.
Mr. E. Ellice.	Mr. Walpole.
Mr. Whiteside.	Sir E. Perry.

THE RIGHT HON. SIR JAMES GRAHAM, BART., IN THE CHAIR.

Samuel Frederick Adair, Esq., called in; and Examined.

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2704. *Chairman.*] WHAT is your profession?—I am a Solicitor.

2705. Practising in Dublin?—Yes.

2706. Have you had much experience in the Incumbered Estates Court?—I have; possibly I am justified in saying considerable; about three-quarters of a million's worth of property has passed through my hands in the Incumbered Estates Court, between sales, purchases, and loans.

2707. Have you practised also in the Court of Chancery?—Yes.

2708. In the Masters' offices?—Yes, to a considerable extent.

2709. How long have you practised as a solicitor?—It is 21 years since I commenced to serve my time, and I have devoted much attention to my profession.

2710. Have you examined the Bills before the Committee, one introduced by the Attorney-General for Ireland, and the other by Mr. Whiteside?—I have read them both; but I have principally considered Mr. Attorney-general's Bill.

2711. With your experience in the Incumbered Estates Court, what is your opinion as to the abolition of its powers, and its transfer to the Court of Chancery; would that be a salutary alteration or otherwise, in your judgment?—I would not at all propose an abolition of the principle of the Incumbered Estates Court; I would engraft the Incumbered Estates Court upon Chancery, little more than transferring the court from its present locality to the Court of Chancery, and engrafting it upon the Court of Chancery, with such amendments as would render the working of that court more perfect than at present.

2712. Supposing the locality changed, and transferred to the Four Courts, would you maintain the Incumbered Estates Court as a separate and distinct tribunal, or would you embody it in the Court of Chancery?—I would carry it on by means of Title Commissioners, engrafted upon the present Court of Chancery.

2713. That is a view that has been presented to the Committee; do you concur in the recommendation that if the transfer were so modified, the Title Commissioners should be confined to the investigation of titles, but should not adjudicate with respect to the claims of parties?—Fully a year ago, if not more, it suggested itself to me that such would be the wisest course to pursue with reference to the permanent dealing with property in Ireland, but I cannot say I still think so.

2714. Would you recommend that the Title Commissioners should be exclusively confined to the investigation of titles, and that the order of sale and the adjudication of proceeds among the parties should be vested in other Judges in the Court of Chancery?—No; upon consideration I would authorise the Title Commissioners, upon direct application to them, to sell estates, or, in case such matters came before the other branches of the Court of Chancery, and they were of opinion that it would be desirable to sell the estate, I would have the subse-

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quent dealing connected with that estate referred to the Title Commissioners; and once the Title Commissioners interfered with any estate they should not only sell, but distribute the purchase money; in short, I would have the Title Commissioners dealing with land in the same way as the Bankrupt Commissioners deal with insolvent personal estates.

2715. There is a wide difference between the practice in the Incumbered Estates Court and the practice in the Court of Chancery in this great particular; the rule in the Court of Chancery, before they order the sale of an estate, is to take care that the personalty is exhausted; whereas in the Incumbered Estates Court, when a debt is proved, no investigation with respect to the personalty takes place, but they proceed to the realty. Supposing the proposed transfer were to take place, would you recommend the maintenance of the rule in the Incumbered Estates Court, or an adherence to the existing practice in the Court of Chancery?—When a man pledges a particular article to pay a particular debt, I cannot see why you should not have recourse to that particular article which the individual has pledged to pay that debt, instead of seeking to get it out of any other class of his property. If a man die possessed of considerable personal estate, prior to his death he has the power of paying that debt off himself, if he so desired it, out of his personalty.

2716. Supposing the transfer to the Court of Chancery took place, do you think that the Legislature should provide, when the Court has the sale of an incumbered estate, that the rule now existing in Chancery should no longer prevail, that the personalty must be exhausted before the realty is sold, in administration suits?—I would compel the creditor, in case of mortgages, to raise his debt in the first instance by sale of the property which had been pledged to him, till that was exhausted.

2717. If the transfer takes place, will it not be necessary that the Legislature should decide that matter by express legislation, if the realty is to be summarily disposed of to meet the debt by sale?—I would have the creditor, other than a mortgagee, seek for the payment of his money from whatever fund he could get it most expeditiously paid, which I believe the law at present entitles him to do.

2718. Supposing your view be adopted, and supposing Title Commissioners be appointed, such as the Judges in the Incumbered Estates Court, would you recommend that there should be Vice-Chancellors appointed, as is proposed by the Attorney-general's Bill, or that the jurisdiction of the Masters should be extended, and they be made for all purposes Judges, as for certain purposes they are Judges under the 15th section of Sir John Romilly's Act?—I think it would be more likely to attain the objects desired, *i.e.*, the immediate or expeditious transfer of the property—to have Title Commissioners or Masters, and not to amalgamate together all proceedings connected with Chancery, leaving them to be dealt with by one particular Judge.

2719. If the business of the Incumbered Estates Court prospectively, and all the arrears retrospectively, were immediately transferred, as is proposed under the Attorney-general's Bill, to the Court of Chancery, without Title Commissioners, and with two Vice-Chancellors only, what would be the effect, in your opinion, of such transfer?—I have no doubt that it would stagnate business. A vast portion of the petitions presented at present, and which constitute what you deem arrears in the Incumbered Estates Court, have been under the Commissioners' consideration; the title and all the circumstances connected with them are known to the Commissioners, and in fact, the Vice-Chancellors should acquire all the information which the Commissioners already have before they could work with reference to those estates.

2720. Is not the business already clogged in the Incumbered Estates Court, already clogged to that extent that the rapidity of obtaining an order of sale is not what it was?—I do not think the clog in the Incumbered Estates Court is at all as large as is supposed. I think it very much arises from the solicitors, for various reasons, not choosing to expedite the sales on the petitions they have presented in that court. I can speak personally with regard to two or three of the recent petitions which I have presented, that they have been presented sooner than they otherwise would have been, with the view of getting the benefit of a statutable title in the event of there being any change in legislation, which would deprive my clients of the benefit of it. A statutable title is so great a boon to Ireland, that I have attempted, as regards the properties referred to, to forestall legislation

legislation upon the subject, and have presented petitions with a view to securing that title.

2721. You think that, when parties are earnest in their desire to obtain a prompt sale, and when delays are not studiously interposed, there is expedition in obtaining a decree of sale?—Quite as much as in the Court of Chancery.

2722. And as much as there was in the earlier period of the Incumbered Estates Court?—No, not so much as then. When the court was first established I sold in a few months a very large estate; but I think there is as much facility as could be expected, considering the amount of property that has been sold and is for sale in that court.

2723. To what do you ascribe the increased difficulty and delay, as compared with the earlier period of the existence of the court?—To the increased business which has been brought into the Incumbered Estates Court.

2724. You speak of delays interposed by solicitors; what are the moving causes of such delays, when they occur?—I do not mean to convey the idea that delays have been interposed by solicitors, but that, either at the instance of themselves or their clients, they are not anxious to press forward the sales of certain estates in the Incumbered Estates Court.

2725. Speaking for yourself or for others, if you are able to do so, are you as well satisfied with the conduct of the business in the Incumbered Estates Court, with reference to the distribution of the proceeds of sale, as you are with respect to the sale itself?—With such amendments as would appear to me desirable to be made with reference to the proceeds of a sale in the Incumbered Estates Court, I think it is quite as efficacious to secure justice and expedition as in the Court of Chancery; but I think that in that matter there are some slight amendments necessary to be made.

2726. What are the amendments to which you refer?—I should propose that, before the money intended to be allocated to a creditor is in fact allocated, he should swear an affidavit of the money being due to him, which affidavit is now made at a subsequent stage, before he actually receives the money; but there is at present an opening for fraud, whereby a party who may formerly have been paid a debt attaching upon an estate, which debt was not satisfied at the time, may come to an arrangement with the owner, and that debt may be paid a second time to the prejudice of subsequent creditors. I think provision should be made that such an evil should not arise.

2727. Do you think that the oath of one of the parties would be a sufficient protection against such fraud?—I think that the oath of the party receiving the money that he had never previously received that sum, would be quite sufficient; that gives as much protection as could be given by the course adopted in the Court of Chancery.

2728. With respect to the past, are you of opinion that, upon the whole, there has been sufficient notice to parties, in the case of property being sold, to prevent any great injustice to those who have contingent remaining interests?—I am disposed to think that there has been. I should think myself that the cases are very few indeed where injustice has been done, and not at all to the same extent as would have been done to innocent parties if 18 millions' worth of property had been sold according to the old system. I have no doubt that very much more injustice would have been done to innocent parties, in the character of purchasers, by their discovering at some subsequent period, after they had paid their money, that they had a bad title, and in order to possess the property would, consequently, be obliged to re-buy it. That has arisen to myself. When the estate came to be sold in the Incumbered Estates Court, owing to an informality in the title, I have had to re-buy it for a client, although it had previously been bought and paid for by him, but the title was found to be defective.

2729. You attach great value to an indefeasible title, you think that it adds to the fee-simple value of the property sold; do you think that it would be just to confine that additional value to incumbered estates, or should it be extended to unincumbered estates in Ireland?—I should extend it to all unincumbered estates intended *bonâ fide* to be sold.

2730. You would not think it right to have sales of unincumbered property without a *bonâ fide* intention of transfer, but merely for the purpose of obtaining the additional fee-simple value?—No; I would not allow it, except in cases of *bonâ fide* sales; and there I would impose a penalty for the increased value obtained, in lieu of fees such as are now payable on proceedings in Chancery.

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2731. What is the nature of the penalty that you would impose?—An *ad valorem* duty on the purchaser's conveyance, to be payable by the vendor from the purchase money, as a penalty upon him for the benefits derived by a statutable title, and which I think the increased price thereby obtained for his estate would more than justify his paying.

2732. Have you in your own mind at all fixed the quantum of that *ad valorem* tax?—I think that he might fairly pay one per cent. out of the purchase money; whereby, in point of fact, upon the transfer of all property one and a half per cent. would go to the country, half per cent. paid by the purchaser, and one per cent. out of the property sold.

2733. That would be a deduction of one and a half per cent. from the fee-simple value of unincumbered property to which an indefeasible title was given?—Yes, it would.

2734. How would you guard against simulated sales, there being a pretence of selling, but not a reality?—I think that the penalty I impose would be a sufficient protection.

2735. You would allow of the sale of incumbered estates without any such deduction?—No, I would impose it upon all; because I think that the increased value gained to the estate consequent upon a statutable title would be more than compensation. In point of fact, I am of opinion that the increased cost of sale without a statutable title of a large estate, between a sale in the Incumbered Estates Court, and a sale in the ordinary way, would more than amount to the one per cent. that I propose to impose.

2736. Then upon all sales of land under a judicial decree in Ireland, whether in Chancery or in the Incumbered Estates Court, you would levy a tax of one and a half per cent.?—There is a half per cent. at present levied, but I would levy one and a half per cent.

2737. With reference to the judicial strength in the Court of Chancery, supposing two Title Masters appointed as you have recommended, do you think that the Lord Chancellor and the Master of the Rolls, with the aid of the four Masters (setting aside for a moment the Receiver Master), with extended jurisdiction beyond the powers of the 15th clause of Sir John Romilly's Act, would be adequate to the discharge of the current business, embracing the arrears transferred from the Incumbered Estates Court?—I think if you have the Chancellor, the Master of the Rolls, and two of the Masters, irrespective of the Receiver Master, they would be quite sufficient to do the business at present done by the four Masters, provided you have the Title Commissioners transferring all landed estates.

2738. What would become of the existing arrears in the Incumbered Estates Court; in your opinion, would the Title Masters, in addition to the current business of sale upon the transfer, be able to clear the arrear which has arisen in the Incumbered Estates Court?—That would, in my mind, much depend upon the Masters selected. I am of opinion it would stagnate the arrears of business now in the Incumbered Estates Court; if it is not to be carried on by parties cognisant of all the circumstances connected with those estates, new Judges would have to acquire all the information now possessed by the Commissioners with reference to those estates.

2739–40. If two of the Judges in the Incumbered Estates Court were willing to take the post of Title Masters, you think that there would be great facility in so arranging the business?—Yes; and I think if they took it you might with great ease transfer to them also the arrears from the Incumbered Estates Court. If you now appoint two Title Masters, leaving the arrears to be worked out in the present court, they will have little or no business for some years, because many properties have been brought into the Incumbered Estates Court, not intended immediately *bonâ fide* to be sold for the purposes of paying incumbrances, but really with a view to the convenience of the owners, and to afford an opportunity, when they do get purchasers for those estates, to give a statutable title.

2741. Mr. *Whiteside.*] May the owner of an estate, to convenience himself in a court of justice, keep the case there as long as he pleases?—He may, provided he is not urged on by any creditor or any other party on the estate; that is within the last two or three years.

2742. The court would be sustained by the country for the convenience of owners who brought estates in there, and did not sell them, and were not forced

to

to sell them by the rules of the court; I thought that a party who brought an estate into the court for sale was bound to proceed in a given time to sell?—No; if any creditor pressed, and it is shown that the party who brought in the estate has not proceeded with due diligence, it is immediately taken out of his hands, and given to that creditor.

2743. Supposing it is so arranged that there is no purchaser, may the owner keep it there as long as he pleases?—He may leave it in the court as long as he likes, or he may apply at any period to have his petition dismissed.

2744. Is there any rule of the court which, when an estate is brought into the court, forces a party who opposes to its jurisdiction, to proceed with reasonable despatch to a sale?—There is no more rule in that court than in the Court of Chancery.

2745. If an incumbered estate is brought into the Incumbered Estates Court by the owner, is there no rule that compels the party to proceed with reasonable diligence to return it out of the court, and have a sale?—At certain periods of the year the Commissioners heretofore have applied to the solicitors, where they see that the proceedings have been unfairly retarded, and required those parties to explain the cause of the delay.

2746. That is all?—That is all.

2747. Mr. *E. Ellice.*] Is there any rule to compel you to proceed with due expedition?—No; beyond the rule that the Commissioners ask for an explanation.

2748. Therefore, if a proprietor or a creditor think it for their own convenience to retain the cause in the court for any time, they may do so without the court either forcing them to proceed, or dismissing their petition?—Doubtless; there is nothing imperative upon a party to proceed if he is not asked for an explanation by the Commissioner, and unless a creditor, or some party interested, seeks to force it on.

2749. Supposing he is asked for explanation and does not afford it satisfactorily to the court, does the court take no means to oblige him to proceed with his petition, or if he does not proceed with it, does not the court dismiss it?—No.

2750. So that the proceedings of the court may be incumbered with as many suits as parties choose to bring before it, to the prejudice of other suitors in that court, by reason of the court becoming completely overwhelmed with old suits of that description?—I cannot say that it is to the prejudice of other suitors, because if a case lies stagnant in that court, then the other suitors proceed with their cases regardless of it.

2751. The accumulation of business would remain in the court, and would appear before the public in the shape of arrears, whereas in fact there would be none?—From day to day the Incumbered Estates Court has now as much as it can do, and I do not think the amount of arrears appearing is, in point of fact, to the actual extent that is supposed.

2752. Would it not be expedient and advisable that some measure should be taken either by rule of court, or otherwise, to compel parties who have presented petitions to that court to proceed with the suits?—Great injustice might follow from such a rule, because a man may find his creditor at a particular time pressing for a particular purpose; whereas in the expectation that that owner might sell his estate to more advantage, he may give him time; and although he may expect that his debt will be paid at some particular, and within a limited period, perhaps still the sale may be retarded by an arrangement between them.

2753. Then you would have a court of justice made a place of convenience for the owner of an estate, where he might hang up the sale of that estate for any period which might appear to him for his own benefit?—If you extend the statutable title to unincumbered proprietors, wanting *bonâ fide* to sell, you then afford them the same opportunity; you cannot compel them to proceed to a sale.

2754. But if you give them the advantage of proceeding by petition to obtain a statutable title, ought you not to compel them to proceed with that petition, so that the court may dispose of it in a reasonable time?—I think it would be exceedingly reasonable to require any party lying by in the court to satisfy the Commissioner that he was either *bonâ fide* proceeding with the sale of that estate, or else the Commissioners should dismiss that petition.

2755. And you think that it would be equally reasonable that the creditor or the proprietor of an incumbered estate should be obliged by the court also to follow up the proceedings, according to the practice of the court, to bring the estate to

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sale in a reasonable time?—I would either dismiss the petition, or compel the owner or creditor to proceed with it.

2756. Does not it sometimes happen that a creditor and a proprietor arrange with one another upon this subject?—I am not aware; If a creditor or owner would not proceed with the sale, I would have the petition dismissed.

2757. Mr. *Deasy.*] You stated, in answer to an Honourable Member, that in the case of the creditor and the owner not proceeding, it was open to another suitor to take proceedings; are you not aware that an absolute owner of an estate for sale in the Incumbered Estates Court prevents any other creditor from instituting any other proceeding in any other court with reference to that estate?—Upon the application of any creditor, whether he appears upon the petition not as a creditor affecting that estate or not, upon his satisfying the Commissioner that he is a creditor upon that estate, the Commissioner, in the absence of due diligence shown in the prosecution of that petition, will give the carriage of the sale to that creditor.

2758. Are not you aware that the law is, that an absolute order for sale once pronounced prevents the institution or prosecution of any other creditor in any other court?—It does not prevent an application for a receiver to the Court of Chancery. If applied to, the Incumbered Estates Court usually give liberty to apply for a receiver to the Court of Chancery,

2759. Mr. *Kirk.*] The class of cases which have been described are those only where the owner is the petitioner?—No; it is similarly applicable to creditors.

2760. The class of cases remaining which are not proceeded with are those where the owner is the petitioner?—Yes, generally; or where the name of the petitioner has virtually been used by the owner. It does not follow that every petition presented in the name of another party is a hostile petition.

2761. It is, substantially, the owner that is petitioning?—That does not at all follow; because there may have been an arrangement after the petition was presented, whereby a creditor who had been hostile at one time may have been satisfied by the owner paying him a portion of the debt, and thereupon he would cease to press forward the sale.

2762. The powers to present petitions to the Incumbered Estates Court have been renewed and continued from time to time?—Yes.

2763. Was not the main object of a great number of those owners who petitioned to acquire the power of giving a Parliamentary title when their estate was disposed of?—I think, as regards many of the petitions presented, the object has been to gain a statutable title, and to enable the estate really to be sold with less expense.

2764. If there was a permanent court for the sale of estates, whether incumbered or unincumbered, there would not be the same inducement to parties to rush into that court, as has existed for the last few years?—Certainly not; many parties, apprehensive that the existing statutable title, which has been looked upon as so great a boon (I might almost say as the commencement of the regeneration of Ireland) would be withdrawn, have been induced to present petitions who would not otherwise have done so.

2765. And therefore that is one cause of the great accumulation of business in the court?—I think so.

2766. *Chairman.*] Has this case occurred, that the owner of a landed estate, conscious that his incumbrances are equal to the full amount of his property, has gone into the Incumbered Estates Court for the purpose of prolonging his enjoyment of that property by three or four years, and has delayed the sale by every possible artifice?—I do not think that has occurred; my reason for saying that is, that upon the application of any creditor affecting that estate to the Commissioner, the carriage of the proceedings would immediately have been taken from the owner and transferred to that creditor. Therefore I think there has been every reasonable opportunity given to creditors to prevent any such step being taken.

2767. A friendly creditor in that case would go to the Court of Chancery and ask for an *ad interim* receiver?—Any creditor may apply for a receiver, pending the proceedings in the Incumbered Estates Court.

2768. Has not it been a very frequent course that there have been delays in the sale in the Incumbered Estates Court, and *ad interim* receivers have been appointed through Chancery over the estate?—There have not been many such instances.

2769. Can anything be more ruinous to an estate, and the tenants upon it, than a course

a course of that kind, the estate being hung up in the Incumbered Estates Court, and, *ad interim*, receivers being appointed in the Court of Chancery?—I do not think the appointment of a receiver under the circumstance you refer to more injurious to the tenantry than leaving the estate in the hands of that same owner, such as you describe.

2770. Mr. *Deasy.*] In how many instances, if any, have you known the carriage of proceedings in the Incumbered Estates Court within the last three years to be transferred from the person who originally instituted them?—I know that it has repeatedly occurred, but I cannot state in how many instances.

2771. Have you known it in your own knowledge?—Yes. In one very considerable estate of Mr. Carter's that was done; Mr. Carter was, I understand, supposed to be using the very artifice suggested, and he was defeated in his object by the carriage of the proceedings being taken from him.

2772. Mr. *Whiteside.*] What interval elapsed from the presentation of the petition till the owner transferred the proceedings to Mr. Gibson?—About two years; it was by the order of the court that the proceedings were transferred.

2773. It was two years in the court before the order was made transferring it to Mr. Gibson?—I cannot speak of my own knowledge; but, in the meantime, steps were taken to mature the estate for sale.

2774. How many years actually elapsed from the presentation of the petition in that case, to the sale of the estate and the distribution of the money?—About two years and a half.

2775. Have you seen a return of the dates of the presentation of petitions and the dates of the final orders for sale, and the actual sales in the Incumbered Estates Court?—I have seen the Return, but I have not analysed it.

2776. Are you able to tell the Committee whether two years has not frequently elapsed from the time of the presentation of the petition, until the actual posting for a sale?—I have myself presented petitions, and two years have elapsed with every anxiety on my part to mature the estate for sale; but the estate not being sold was not owing to any neglect, default, or delay on the part of the Commissioners, but to the difficulty of making title.

2777. Do you not know that that has occurred in a vast number of other cases, as well as those which you have mentioned?—Doubtless there have been a great many such cases.

2778. Have you ever seen a calculation of the amount of interest lost by the creditors and proprietors from the non-distribution of the purchase money after the sale?—I have not seen that return, but one of the suggestions I would myself make, would be to counteract that evil.

2779. Has it not been an evil of great magnitude? Take the case of a *non est* proprietor who is liable to pay six per cent. interest upon old mortgages; the first mortgagee must get his interest, but several other creditors subsequently to him have not equal priority; it is no object, in that case, to the first creditor to press the sale forward. If the purchase money is not distributed, does not the non-distribution of it work a great mischief to the other creditors and the proprietor?—A most serious mischief.

2780. Mr. *De Vere.*] Is not the money invested if any creditor shows that the consequence of its not being invested would fall upon him?—Yes.

2781. Mr. *Whiteside.*] At whose risk would that be done?—At the risk of the creditor who applies for the investment, if he be the last creditor on the estate.

2782. How is that?—If the funds rise, he gets the benefit; if the funds fall, he loses.

2783. Is it not the case, in point of fact, that vast sums have lain in the court not invested, and not bearing interest, and not being distributed for a very considerable period of time?—There is no doubt that they have; but those are cases where the solicitors either did not apply for the investment of those funds, or thought it more desirable not to apply.

2784. The money lies there undistributed, and, consequently, whilst the first creditor would get the old Irish interest of six per cent., and the owner had lost his estate, neither the owner nor the puisne creditors have the advantage of an immediate distribution of the funds?—I think very much of that is to be attributed to the solicitors having the conduct of the sale. In almost every instance where the solicitor ascertains the priorities, and goes to the court, and satisfies the court that the priorities are as they will subsequently be found to be, the court will

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will distribute the money on motion before the final schedule of incumbrances is settled.

2785. If a solicitor does not do that duty, this court furnishes no means to force him to do so, more than the old Court of Chancery?—No.

2786. We will take the case of a mortgage for a large sum of money. The solicitor for that mortgagee being the party conducting the sale, he is certain of getting a large interest out of the produce of the sale, and he does not proceed, and consequently the fund lies undistributed; is not that a great evil?—If he does not proceed, and another creditor applies to the Commissioners, the Commissioners will make the order transferring the carriage of the case, on the application of the party anxious to proceed, even though a subsequent creditor. It is but justice to the Commissioners to say that they have always allocated the money as soon as possible, if applied to.

2787. Has not it sometimes lain six, nine, and twelve months after the sale before it has been distributed?—Yes.

2788. Are not the Commissioners absolutely unfettered by any rules laid down by Act of Parliament; can they not make what rules they please for the practice of their court?—No; they are required to be approved of by the Privy Council.

2789. But after that have they not the power?—I do not know the fact; but I know that they do not exercise those rules unduly.

2790. As I understand your evidence, a great deal depends upon the diligence of the solicitors practising in the court?—I think a good deal, and their being instigated by other parties.

2791. You were asked by the Right honourable Chairman about the appointment of receivers. In the Court of Chancery, the court that has a jurisdiction to sell an estate, have likewise a jurisdiction to appoint a receiver *ad interim*?—Yes.

2792. The Incumbered Estates Court does not exercise, or has not the jurisdiction, to appoint a receiver?—No.

2793. Can you conceive of a greater mischief than that one court should proceed to the sale of an estate, and the other court should appoint a receiver, and have alone the control over that receiver, and the management of the estate, through the medium of that receiver?—I am not prepared to say that, because you have at present, in all receivership cases that have lately arisen, a receiver Master, whose particular attention is directed to the management of receivers, and who, certainly, has given his most anxious attention to having the management of the estates conducted with the least possible expense.

2794. If you do not think that there is a great mischief in two courts proceeding against the same estate, what should you think if there were three courts proceeding against the same estate. In reference to the fact of the court for the sale of incumbered estates proceeding to the sale of an estate, and while it is proceeding to the sale, another court appoints a receiver, and manages the estate through the medium of its officer, is not that a manifest inconvenience, and a manifest additional expense to the proprietor and the creditors?—The expense of the actual appointment of a receiver is trifling indeed, unless it is in the case of a very small estate. If it be an estate of any magnitude, such as you would consider worth the appointment of a receiver, pending the sale in the Incumbered Estates Court, the expense is very trifling. The question is, whether it is more desirable to have two officers virtually in the same court, one having the management of the receivership portion of it, and the other having the sale of the corpus.

2795. Mr. *De Vere.*] In the case of a receiver, appointed by a friendly creditor, would not that receiver at once become the receiver on behalf of all the creditors, whether friendly or otherwise?—Yes, he would. It does not follow that the receiver appointed by the court should be the nominee of a friendly creditor.

2796. If he were nominated by a friendly creditor, he would become the receiver on behalf of all the creditors, whether friendly or otherwise?—Doubtless.

2797. Mr. *Whiteside.*] Whose orders does a receiver in the Court of Chancery of an estate in the Incumbered Estates Court obey?—The orders of the Court of Chancery.

2798. Still the fund that he has to collect is to be disposed of by the Incumbered Estates Court ultimately?—No, the fund that he collects is distributed under the order of the Court of Chancery.

2799. Has not the Incumbered Estates Court authority to dispose of and sell that

that estate?—They dispose of the corpus; the receiver distributes the rents arising.

2800. Do you think a separate jurisdiction in the one court to dispose of the bulk of the estate, and in the other, to distribute the rents and dispose of them by separate orders and authorities, convenient for the administration of justice?—I think that it would be more desirable that the power to order the distribution of the rents of the estate should emanate from the Judge, who is ultimately to sell.

2801. *Chairman.*] The total amount of the value of the land sold in the Incumbered Estates Court, is somewhere about 18,000,000*l.*; how much of that sum has been distributed?—I understand 14,000,000*l.* or 15,000,000*l.*

2802. How long have you known a title under investigation by any one of the Judges in the Incumbered Estates Court, and the sale delayed on account of the investigation?—After the title is lodged, a solicitor has no means of ascertaining exactly how long the Commissioner may take to investigate that title; he does not know exactly when the Commissioner begins to read it, and when he terminates the reading of it.

2803. In point of fact, what is the longest delay you have known between the lodging of the petition and the absolute order for sale?—The delay is very short between the lodging of the petition in general, and the conditional order for sale; but the Commissioners in some cases require the conditional order to be served upon parties who may be out of the jurisdiction a longer time than upon other parties, before the conditional order can be made absolute.

2804. But that conditional order may be issued before the Judge has satisfied himself with respect to the title?—The conditional order does issue before the title is lodged at all, in many cases.

2805. How long have you known the investigation of the title, by one of the Judges, to last?—The title is not lodged, in many instances, till after the absolute order is made, and then the title being prepared by the solicitor, is lodged at a subsequent stage; the conditional and absolute orders are both made very often before the title is ascertained.

2806. Is the absolute order to sell, made before the title is ascertained?—You present your petition, and in your petition you affix a short statement of the title unsupported by searches and otherwise, which presents to the Commissioner a *primâ facie* case to justify his making a conditional order; that conditional order being made, time elapses to afford an opportunity to parties upon whom it is desired to be served, to show cause why it should not be made absolute; it is then made absolute, and then follows the preparation of the abstract of title, upon which abstract the Commissioner directs the searches to be made in support of that title.

2807. What is the longest time in your experience that has elapsed between the commencement of the investigation of the title, and the satisfaction of the Judge that the title is complete?—We have no means of ascertaining that, because we cannot know the exact date that the Commissioner may commence to read the title.

2808. Has not such a period as a year elapsed, in some cases, after the Commissioner has begun to investigate the title, before he was satisfied with the title?—I should think not; of my own experience I could not feel at all justified in saying so.

2809. What period would you put, as the longest that you have reason to think has occurred?—That would very much depend on the delay in the registry office, in giving the result of the searches that the Commissioner directed; because he is not finally satisfied on the title till he has investigated the searches which he so directed; those searches are made in the registry and other offices, and the delay in some instances there has been considerable.

2810. Practically has not the delay been progressively becoming greater?—I do not think so within the last four years; there was not the same delay at first, nor was there the same delay in getting the result of the searches from the registry office.

2811. Within the last three years the delay has not been progressive?—I think not.

2812. Mr. *Fitzgerald.*] You said, that you thought that there was nothing that could be called arrears in the court, and that there was no unnecessary delay?—

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No. I said, that some portion of what would appear to be arrears are, in point of fact, not arrears.

2813. Is it not the case, that there is considerable delay now, which is unavoidable, in settling the schedule of incumbrances?—Doubtless there is.

2814. If you wish to have a day appointed to settle the schedule of incumbrances, do you not find that it is out of the power of the court to give you any day till the expiration of two or three months, or even longer?—Before I can answer that question, I must know at what stage the proceedings are.

2815. After a sale, and after you bring in the result of searches, and the solicitor is in a position to call upon the Commissioner to give him a day to settle the schedule of incumbrances?—I do not think so; I think I could command a day within two months.

2816. Mr. Gibson stated to the Committee that in the month of June last he sent a small schedule of incumbrances, with a view of distributing the fund, into Mr. Commissioner Hargreave's office, and that they were not able to gain any appointment till the month of November?—That is quite consistent with my answer.

2817. Will you explain that?—Your question was as to settling the schedule of incumbrances; but after the schedule of incumbrances is settled, then the Commissioner names a day for allocating the fund; and there is always an interval after the schedule of incumbrances is settled before the fund is distributed, and that would bring in the vacation intervening between June and November.

2818. You apprehend that Mr. Gibson's answer referred to the difficulty of appointing a day for the distribution of the fund only?—As you read it to me, it does.

2819. In your opinion the court has acted very satisfactorily?—As satisfactorily as, considering the enormous amount of property under its jurisdiction, could have been expected.

2820. To what do you attribute the successful operation of the court?—I attribute it primarily to the simplicity of the Act of Parliament and of the rules framed in pursuance of that Act, each of which are intelligible to practitioners. To the exemption from fees—to the certainty of possessing the land bought, free from legal questions as to the validity of the title—to the conciseness and simplicity of the title deeds, and the ascertainment thereby of the tenancies—to the power of the purchaser to calculate the expense of his purchase without, as in ordinary cases, knowing that he would have to pay for the investigation of a title, a sum, even the probable amount of which he could not calculate on—to the facility afforded to the public of inspecting the records of the court, and the proceedings being free of expense—to the facility of communicating with the Judge conversant with the title and the details of the case—to the intelligence, activity, and courtesy of the Judges and the officers in general of the court.

2821. You attribute greatly the success of the court to the accessibility of the Judges who have the conduct of the suit?—I do, very much indeed.

2822. Are you of opinion that if high officers, such as Vice-Chancellors, were appointed, it is probable that there would be a similar access to them as that which exists now in the case of the Commissioners of the Incumbered Estates Court?—I do not think there would.

2823. And you think it of great importance to maintain that freedom of access to the Commissioners?—I think it most material for attaining the objects contemplated.

2824. Will you proceed with your statement?—I further attribute the success of the court to the facility and rapidity of allocating the money and obtaining information at all times with reference to the funds in court; to the intelligence and extreme courtesy of the accountant, and to the simplicity of his books; and finally, to the facility of taxing the costs in that court which are taxed under one schedule of fees, whereas in the Court of Chancery there are eight or ten.

2825. Having made yourself acquainted with the staff that is proposed by the Attorney-general's Bill, are you of opinion that two Vice-Chancellors would be sufficient to transact the business at present transacted by the four Masters in Chancery and by the Incumbered Estates Court, including the arrears which at present exist?—I do not entertain the slightest doubt but that such would be tantamount to a stoppage of business.

2826. Can you suggest any imperfection which at present appears to exist in the Incumbered Estates Court which might be readily met by rules of the court,

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or by legislation?—It strikes me as very important that the locality should be changed; that would be a professional and public advantage. It strikes me that preparatory to an immediate sale an upset price should be set upon the property for sale, with a view of protecting it from being sold below its value. I know of no commodity sold by auction, save land by the Commissioners, where a solvent owner cannot protect himself against his property being sacrificed; and I do not think the Commissioners sitting on the bench can form a fair estimate of the value of the property; they having no local knowledge, either as to the character of the land, or the class of tenantry.

2827. How would you have that upset price ascertained?—By a previous examination into the fair value of each lot; or else I would have the estate sold by an auctioneer, with a reference to the Commissioner as soon as could be afterwards, to determine whether the price offered was fair or not.

2828. Is not that obtained now, to a certain extent, when there is a valuation of each lot made by a valuator appointed by the court, and it is only left to the court then to see the number of years' purchase upon that valuation by auction?—There is of very many estates no valuation made. The valuator is not appointed by the court; he is selected under the order of the court, but the nomination of the valuator is left to the solicitor having the carriage of the proceedings.

2829. Are you of opinion that those values which are commonly fixed are not fair and just values?—In my experience, I set little value upon them in general. I can instance the case of a valuator appointed, as I am informed and believe, who when he went to value an estate, fell in love with the proprietor's daughter, and they managed the valuation after dinner, setting the owner's value on each lot.

2830. Mr. *Deasy*.] Are you aware that the valuators have, in many cases, not seen the estates that they profess to value?—I myself set no value upon the valuations generally made.

2831. Are you aware of that fact, that they have sometimes never seen those estates, or been at all upon those estates, which they profess to value?—Perhaps I should not be justified in saying that.

2832. Mr. *Whiteside*.] Is there no rule of that court which requires that a valuator paid out of the funds of the court shall honestly perform the duty that he undertakes?—It is possible for him not to do so.

2833. Does the Judge who is estimating the value of the estate by a certain number of years' purchase, take no means to ascertain that it has been an honest valuation, really made, and fairly paid for?—Very many estates have been sold without any valuation.

2834. But supposing there is a valuation?—I am not prepared to say that the Commissioner forms his estimate of the price which he ought to take upon the valuation.

2835. But he has it before him?—If published he has.

2836. It is in the office?—Not necessarily.

2837. If there is a valuation, what is done with it?—It is given to the solicitor having the carriage of the proceedings.

2838. You say that the valuation when made is given to the solicitor; does he bring it into the office of the Incumbered Estates Court?—It is not lodged in the office of the Incumbered Estates Court.

2839. Is anything done with it; is any use made of it?—It may or may not be adopted and printed as a valuation by that party having the carriage of the proceedings.

2840. If it is printed, what is done with it?—It is left with the solicitor who has the carriage of the proceedings.

2841. What does he do with it?—He places it with the papers connected with that estate; it is not a matter of record in the court.

2842. Is that a paper that is handed about to attract purchasers?—I am not aware that any valuation is handed about to attract purchasers irrespective of that which may be published.

2843. Is it paid for?—It is.

2844. Out of what fund?—Out of the funds produced by the sale of the estate.

2845. What is done with that thing so paid for out of the proceeds of the sale of the estate?—The solicitor generally publishes it with the rental.

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2846. And therefore the buyer will see it?—Yes.

2847. Is that rental before the Commissioner when the Commissioner presides at the sale?—It is.

2848. Does he take any means of inquiring whether that valuation has been made in the way suggested by the honourable and learned gentleman, or whether it has taken place at all?—He does not take any means of ascertaining the mode by which that valuation has been made.

2849. Mr. *Fitzgerald.*] Dr. Longfield expressed an opinion that it was of great importance that where a sale was ordered, the sale should certainly take place, and that there should not be an upset price, because he considered that the prices of estates were on the whole increased by the public feeling a certainty that there would be a sale, and consequently not being induced to absent themselves from a sale, or to wait for another opportunity; are you not of opinion that if an upset price was so fixed, it would have an unfavourable operation in the way suggested by Dr. Longfield?—I think not; I would have that upset price of such an amount, as that even if the purchaser did get the estate at that price, it would be rather below the fair value than the extreme value.

2850. Are there not very often circumstances connected with the property, as to the character of the tenantry, the local situation, and other circumstances which must necessarily enter into the purchaser's calculation when he estimates the value of the property, totally irrespective of the mere rental of the property, and the probable interest that he would derive for his money?—I would have the upset price arranged in such a way as that those peculiar and local circumstances should not be taken into consideration as regards the purchaser.

2851. In the case of a property which was very favourably circumstanced, if the upset price was to be such as you would fix in the case of a property unfavourably circumstanced, that upset price would be far below the value of the estate in fact?—I would by some machinery protect solvent owners from having their estates sold at prices that they might deem considerably below the value; the important effect of which I have myself seen (although the act has been done contrary to the rule of the court), to have proved most efficacious. In one estate alone upon one sale, I have no doubt but that the solicitor intervening, although contrary to the exact rule of the court, and not allowing any lot to go below a particular price, caused upon that day's sale an increase of price to the amount of 40,000*l.* I have known another case, where I intervened at the instance of the owner, and he is of opinion that 10,000*l.* increase of price was got on that day's sale, consequent on his saying that he would not allow his estate to be sacrificed, and another case where a like course produced 7,000*l.* increase; but that is not the rule adopted by the Commissioners, and the consequence is that the owner has no real means of protecting himself, no matter how solvent his estate may be, from having his estate sacrificed or sold below what he may consider the value.

2852. Then you do not agree in the opinion that the best way of obtaining a full and adequate amount of value is the adoption of such rules in the court as shall insure the utmost amount of competition?—I do not think that the absence of competition should be a criterion of value. You may have an estate with regard to which there may not be competition upon the part of persons in court, and I do not think that the absence of competition should be a fair criterion of value.

2853. In saying that there is no valuation necessarily before the Commissioner, of course he has before him the Poor-law valuation and Griffiths' valuation?—Yes, he may have.

2854. And in case of there being a receiver over the property he has always also the receiver's accounts?—Yes, he may have.

2855. Therefore, in the case of all estates, as regards Griffiths' valuation, and the Poor-law valuation, all that the Commissioner has to do is to ascertain the number of years' purchase?—Yes; if he has such valuations before him.

2856. Mr. *Macartney.*] Were you present at the first offer of sale before Mr. Commissioner Richards, of the Limerick estates of Lord Kingston?—Lord Kingston's estates were not in the chief's office.

2857. Who was the person who acted as auctioneer of the Commissioners when the Limerick estates were first put up for auction?—I have no recollection.

2858. Have you known in the early part of the sales made by the Commissioners, the proprietors and creditors uniting, and also the solicitors, to pray that the

the sale might be adjourned, and that the Commissioner, notwithstanding that, has proceeded to a sale, and sold at much lower rates than would have been procured?—One such case occurred with myself.

2859. And by which a very serious loss arose to the creditors?—To the owner.

2860. With regard to the abstract of title being submitted to the Judges of the court, is the practice the same with the three Commissioners as to the abstracts of title, or have any of them a different practice to that which it has been stated to the Committee is the case with some of them, namely, deciding upon the title themselves; has any one of the Commissioners an advising counsel, to whom he recommends that the abstract should be sent in the first instance?—No, I think not.

2861. Do you know of your own knowledge of Mr. Richards advising upon titles with the Commissioner?—I have had two large estates in the chief's office; one Sir Hugh Stewart's, and the other Mr. Butler's, and on both titles I had the opinion of counsel, and neither of those was submitted to the chief's son. I selected my own counsel in cases where the chief's son has been selected. I feel satisfied that the selection has emanated from the solicitor.

2862. Mr. *Deasy.*] You were speaking of administration suits in the Court of Chancery, and the Court requiring the personal estate to be exhausted before any sale of the real estate could take place; is that the present practice in the Court of Chancery?—I think the Court of Chancery will not make any decree for a sale until they have made both inquiries, which go on at the same time. They ascertain the amount of personal property, and they also ascertain at the same time the amount of the landed estates.

2863. Am I not right in this, that the Masters acting under Sir John Romilly's Act do make orders for the sale of the real estate before any report takes place, or before the exact amount of the personalty is ascertained?—I do not think they would make a decree for a sale till they had made an inquiry; but doubtless they will require the estate to be sold if there is any difficulty in realising the personal estate.

2864. As soon as they see that a sale must take place, do they not make an order for the sale?—They do, although personal estate may appear to exist.

2865. When a man is possessed of real and personal property, and dies possessed of a mortgage or judgment, does not it frequently occur that two proceedings are taken with respect to his estate; one in the Court of Chancery to administer the personal property, and take an account of the debts, and another afterwards in the Incumbered Estates Court to sell the real estate?—I cannot state that of my own knowledge.

2866. Is it not a matter of frequent occurrence that in such a case as has been put, after the Master has taken the accounts of the debts, the personal and the real estate, the party having the carriage of the proceedings presents a petition to the Incumbered Estates Court for the sale of the estate?—Such cases have not come under my notice; I cannot speak from my own knowledge.

2867. Supposing such a state of things to exist, is not it attended with great inconvenience and great additional expense to have one tribunal for administering in such a case the personal estate and taking an account of the debts, and another tribunal for selling and distributing the proceeds of the real estate?—I do not think it is attended with additional expense, for this reason, you must have such investigation.

2868. With respect to sales in the Incumbered Estates Court, are you aware of any instances in which solicitors having the carriage of the proceedings and the conduct of the sale, have purchased portions of that estate for their own benefit?—I have heard of it, but I do not know it of my own knowledge. I have cautiously avoided it myself. I believe that such cases exist.

2869. Is there any rule or practice in the Incumbered Estates Court sufficient to prevent such things being done, supposing a solicitor was disposed to do it?—No; I was present when that was under discussion before the full Court, and they were of opinion that if they were to make such a rule, it could always be evaded by a trustee purchasing for the solicitor.

2870. Does not the Court of Chancery prevent the possibility of such a thing occurring?—There is such a rule in that court.

2871. And is it not strictly and stringently acted upon?—I believe it is.

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2872. Is it not expedient for the public interest that the occurrence of such things should be prevented?—Yes, most unquestionably, in my opinion.

2873. With respect to persons having the carriage of the sale, is it not a matter of frequent occurrence in the Incumbered Estates Court that they become the purchasers of the estates which they have brought to sell, or a portion of them?—I cannot state that of my own knowledge. I have heard that such has been done, but I am not justified in stating that of my own knowledge.

2874. Does not it occur to you that it would be expedient to have the practice in the Court of Chancery with respect to such matters adopted in any new tribunal established for the purpose?—Most unquestionably.

2875. Mr. *Grogan.*] You intimated an opinion that what are called the arrears in the Incumbered Estates Court, strictly speaking, would not be arrears in your view?—I say that a portion of what appears to be arrears are not, in point of fact, arrears.

2876. And I understood you to say, that the portion which you considered not to be arrears was the cases of estates brought in for the purpose of obtaining a Parliamentary title, but which are not actually incumbered?—I can only speak with reference to the estates that I have myself brought in. I have brought in incumbered estates, from my deeming a statutable title such a boon, I presented the petition with a view of getting a statutable title on the sale of those estates.

2877. Were they incumbered to half the amount of their value, which is the rule of the Incumbered Estates Court?—I think one was.

2878. As a general rule, in the case of estates to which you now allude, would they come strictly under the rule of the Incumbered Estates Court, that they should be incumbered to the extent of half their value?—One would.

2879. There are exceptions to that rule then?—Yes.

2880. Do the Commissioners, in receiving those estates on their list for sale, make any enquiry if they have complied with the rule in question?—As regards the application of that rule of being incumbered to half the amount of the value, the Commissioners have made no enquiry upon that point; that should emanate from the owner himself objecting to the sale, on the ground that his estate was not incumbered to the amount of half the value; but the Commissioners have not been in the habit of making enquiries upon that point.

2881. When you express your opinion that there is very great value attached to a Parliamentary title, in such a case the owner would not object?—No.

2882. Your own experience would also go to confirm the high value attached to a Parliamentary title in Ireland?—Unquestionably. I know, to a very large extent, trustees lend money upon that title who would not be got to lend it upon an ordinary title at all, and parties now purchase who were formerly deterred from doing so.

2883. The practice in some instances, therefore, is to make use of the machinery of the Incumbered Estates Court to enable a Parliamentary title to be obtained?—No such case has come under my notice further than with a view of selling to get the benefit of a Parliamentary title. I have not known any instance of an owner presenting a petition and acquiring a Parliamentary title to his estate for his own benefit and enjoyment.

2884. You have also stated that, in your opinion, the power of conferring a Parliamentary title should only be in the case of estates intended *bonâ fide* for sale?—I should limit it to that.

2885. If a Parliamentary title be of the value which you and the people of Ireland attach to it, why would you limit it to that class of property?—Because the owner of the estate can have no object in getting a statutable title save for the purpose of sale.

2886. I assume that the owner of the estate has a wish to acquire a Parliamentary title to his estate, why would you deprive him of the advantages which would accrue to his estate by having a Parliamentary title?—He could easily arrange perhaps to get a Parliamentary title if he pay the penalty of one per cent. upon the sale.

2887. You said yourself, in the earlier part of your examination, that you would confine a Parliamentary title to estates *bonâ fide* intended for sale, that is, in case an estate was not intended *bonâ fide* for sale, you would not give a Parliamentary title?—Yes, I would make that regulation with a view of preventing the branch of the court, such as I suggest, becoming a branch merely for the convenience of private individuals.

2888. We will assume that an unincumbered proprietor is anxious to obtain a Parliamentary title to his property, would there be any difficulty in his incumbering his estate ostensibly for the purpose of bringing it within the rule of the Incumbered Estates Court at present?—No, he may create a fictitious incumbrance and bring it within the powers of the Incumbered Estates Court.

2889. Have you ever known that practice, or anything approaching to it, adopted for the purpose of getting a Parliamentary title?—I do not think that I am justified in saying that I have. I have known cases of a determination to sell an estate, and I have known incumbrances created, and the Incumbered Estates Court made the machinery for selling the estate. I do not say that the incumbrance was created for the purpose of getting the machinery of the Incumbered Estates Court to operate to give an increased value to the estate.

2890. You use the words "incumbrances created;" am I to understand you that they were *boná fide* incumbrances?—*Boná fide* incumbrances. I have never known a fictitious incumbrance created for the purpose of getting a Parliamentary title.

2891. You stated that part of the arrears of the Incumbered Estates Court could scarcely be called arrears with reference to the other part?—I did not say that part of the arrears could scarcely be called arrears, but that part of the cases pending in the Incumbered Estates Court, I think, can scarcely be called arrears; that is, with reference to the estates generally, I do not think all the business there can be looked at as unworked out arrears.

2892. With regard to the class of estates that are *boná fide* unworked out arrears, do you conceive that the Incumbered Estates Court are fully adequate to the discharge of the whole of the business relating to Incumbered Estates?—I do; I think that the present Incumbered Estates Court is quite sufficient to work out all the business at present existing, and all the business that may come in.

2893. What length of time would be necessary for them to work out, in addition to the current business, the actual arrears?—That would depend upon the amount of current business that might come in.

2894. From your experience of the working of the court, what length of time do you think would be necessary?—It would depend upon the amount of current business that might come in.

2895. The time for receiving petitions under the Incumbered Estates Court will terminate next July; it is considered that two or three years might be desirable or necessary to work off the entire of the arrears of the court; if, in addition to the working off of those arrears, the court business of incumbered property be continued in that court, what length of time would elapse before the whole would be cleared out, taking the arrears as at present existing, and the usual amount of petitions coming into the Court?—I should not like to express a positive opinion as to what length of time it might take them to sell the estates at present in the court; I am not sufficiently acquainted with the character of each estate to do so.

2896. Have you any doubt that two years would be adequate?—I have little doubt that it would; supposing the Court to be continued to work out its arrears, I think very great injury may be done to proprietors of estates, by continuing the court to work off its arrears, because during the progress of cases supplemental petitions occasionally are necessary, as for instance; during the progress of the sale of a leasehold estate the head rent may come to be sold, which the owner of the leasehold may purchase, in order to sell the fee instead of the leasehold, whereupon it becomes necessary for him to present a petition to embody the sale of the head rent with the sub-interest, and if you stop the presentation of petitions injury would thereby be done to the owner of the estate.

2897. Mr. *Fitzgerald.*] Will you shortly state what improvements you would suggest?—I think the Commissioners should be empowered to give the carriage of the proceedings to the parties most interested, and not to any party who may present a petition for any particular purpose; I think that the payment by the Commissioner of any incumbrance affecting the estate should have the effect of satisfying that incumbrance, or else the Commissioner should have the power to execute a certificate of satisfaction; where a portion of a large estate has been sold by the court, and a mortgage or judgment affecting the whole of that estate, such mortgage has been paid by the court, but there has not been any satisfaction

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of it as regards the remainder of the estate; and I think that any legislative enactment upon that point should have a retrospective effect; the present form of conveyance should, I think, be slightly altered; the schedule should contain a full rental of the land conveyed, instead of as at present, merely disclosing the tenancies; thus, by the addition of a few words and figures, a great check against fraud will exist, and that which appears to many purchasers as a mistake and calculated to mislead, will be rectified. I also think the power to partition estates should extend to unincumbered as well as incumbered properties. I think it would be desirable to empower the Court to give certified copies of leases and such like instruments which would be useful in a court of law as legal evidence. Heretofore the Court has been in the habit of selling estates, of (which two or three lots have divided tenancies), and of one or two of those lots a copy only of that instrument is given to the purchaser, which cannot be used as a legal instrument in a court of law; and when the purchaser ejects or otherwise deals with his tenant, secondary evidence of the existence of that document must be given; and I think that great injury is done thereby, and the purchaser put to great unnecessary expense. I would oblige a map, similar to the one attached to the conveyance or partition, to be affixed to the memorial for registration purposes. It seems to me, that where the Commissioners have sold, and attach so much weight to the map affixed to the conveyance, that the map should be compulsorily put upon the memorial for registration. I should render it compulsory to register the conveyances from the court within a particular period; it formerly was the custom to enrol a deed within a definite period. I should have, as far as possible the names used as to the townlands on the Ordnance survey adopted by the Commissioners in their conveyances; I would have a seal for conveyances separate from that used ordinarily in the Court for attesting copies and such instruments. The Commissioners should have lodged in Court, after the investigation of the title, along with the title-deeds of the estate, the original searches made in support of the title thereto. I would proceed to settle the rental and the schedule of incumbrances together, so as to allocate the purchase money of the estate as soon as possible after the sale. I would provide, by some means such as I have formerly suggested, that incumbrances could not by possibility be paid a second time, by having an affidavit made beforehand of the sum being due. I would limit the expense of advertisements, which in my mind are at present unnecessarily large for that purpose. I would have one paper, guaranteeing the largest circulation, as being the one to give the detailed circumstances of each estate, and I would have the local and other papers, contain merely a reference to that paper, stating shortly the particulars of the estates for sale. I would require the solicitor having the carriage of the sale to verify, by affidavit, the fairness of the rental, that reasonable diligence had been used by him to procure purchasers; that he would not influence the sale for the benefit of himself or friends; and that the rental was prepared in the best manner to secure purchasers. I would have the surveys made by some recognized surveyor, and not as at present, by any nominee of the solicitor having carriage of the proceedings. I would give notice, by some machinery, to the proprietors of adjoining estates, of the properties proposed to be sold. I would continue the taxing officer as a separate officer attached to any Court you establish; and I would have a separate accountant. As to the sale of arrears of rent, I feel considerable difficulty, unless you put the purchaser into immediate possession of the estate after he purchases; because circumstances may arise, and constantly do arise, whereby the purchaser of an estate does not get possession for months. In some instances, for the convenience of the purchaser, and at the instance of all parties, the conveyance has not been made for a considerable period; and if you sell the arrears, the arrears must be collected by some one. Great injustice, in my mind, is done from not rendering it compulsory to register wills. One instance has come under my notice where a proprietor having died, his heir in three or four years raised money upon the estate, stating that he was the heir of his father. The estate was mortgaged, the proprietor having made an affidavit that his father had died intestate; the mortgage continued to be paid for a considerable number of years, but two years ago, when I applied for the interest, I was met by the production of a will which renders the mortgage of no value.

2898. You suggest that notice should be given to the proprietors of adjoining properties, of the property proposed to be sold; have you known any cases of injustice, where property has been sold as belonging to one proprietor, but which really

really belonged to another?—It is to provide against that possibility that I offered such suggestions.

2899. Have you known instances of that kind?—I cannot say that I have.

2900. *Chairman.*] Are those suggestions offered as the result of your experience of proved defects in the existing tribunal?—They are.

2901. If this tribunal were transferred to the Court of Chancery, could the Lord Chancellor and the Master of the Rolls, by their power of making general rules, give effect to your suggestions, and remedy the defects without legislative interference?—I think not; certainly not as to the majority of them.

2902. Legislative interference would be necessary to give effect to a large portion of them?—That is my opinion, otherwise I should not have suggested them to the Committee.

2903. Mr. *Fitzgerald.*] Those suggestions, which are to be carried out by general rules to be made by the Chancellor and the Master of the Rolls, could equally have been made by the powers vested now in the Commissioners to make general rules for the Incumbered Estates Court?—Doubtless one or two of those suggestions could be met by rules; but those with respect to payments of incumbrances having the effect of satisfying the charge, and with reference to attested copies being legal evidence, and with regard to the memorial, could not be met by rules.

2904. *Chairman.*] Your experience of the working of the Incumbered Estates Court leads you to the conclusion that it is very far from being a perfect tribunal with reference to justice?—I could suggest no amendments, save those which I have already made.

2905. Are they all necessary for the working of the Court, consistently with justice?—Yes, in my opinion; in the case of the map to be attached, I consider that for further protection, where you give a statutable title, it seems very desirable to provide as far as possible against frauds.

2906. That is rather a theoretical improvement, than a practical necessity?—I think it a practical necessity to protect persons against fraud.

2907. Do you know of any fraud which has been committed in consequence of the absence of that regulation?—I do not, but there is an immense opening for fraud in consequence of the absence of it, because the Commissioners convey by map, and it would be very easy to attach a small addition to that map of a neighbouring estate.

2908. Is it beyond the power of the Commissioners to make that order now that the map shall be attached?—I rather think it is.

2909. Then they differ from you?—I do not know that their attention has been drawn to it.

2910. They do not think that such defect renders their interference necessary?—I do not know that their attention has been drawn to it.

2911. Mr. *Deasy.*] How would putting it upon the memorial protect the public against such a fraud?—I know of one instance in London which will explain my reasons; a conveyance was made of an estate to which was attached a map; that map was altered; the registered memorial contained the map; the conveyance in reference to bounds formed the subject of litigation in London, and it was not till the twelfth hour that the fraud was detected by the production of the memorial.

2912. Mr. *Whiteside.*] You have stated the case of a fraud committed by an heir-at-law, suppressing the will of his ancestor, and getting money upon mortgage, in your recommendations to the Committee for enabling a man to sell his unincumbered estate; might not that fraud be committed every day if he suppressed the will and got an order to sell his estate by these Title Commissioners?—It is to remedy any such possibility that I suggest the rendering it compulsory to register the will.

2913. Would not that same fraud that you describe there take place?—Doubtlessly it would; but the only one that would be injured by it, would be the party possessing the will, who did not choose to publish its contents in an earlier stage.

2914. The only person injured would be the owner of the estate?—Yes, but without such compulsory registration of a will as I have suggested, no purchaser either of a devised estate, or of an estate descending to him by intestacy can at at any time be perfectly protected save by statutable title against against a will subsequently transpiring and invalidating his purchase, although it may have been fraudulently and intentionally kept back.

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2915. Amongst your objections, you mentioned the abolition of fees?—No; I stated that as to the useful working of the Court the absence of fees would be an advantage.

2916. Would you also recommend that the fees of the Court of Chancery should be abolished?—I think that would be a great boon.

2917. Did you say that the sale of an estate in the Incumbered Estates Court is cheap?—I think if you limit the expense of advertisements it is.

2918. I am taking it as it is at this moment; is it cheap?—I think it is considerably cheaper in a large estate than the costs that would follow from the sale of the same estate without that tribunal.

2919. Take a small estate; is it cheap?—If I was selling an estate with an anxiety to sell it at the lowest possible expense, I should prefer selling it through that Court than undertaking otherwise to make title to a purchaser.

2920. In reference to the surveyors and solicitors and counsel, supposing that you sell a small estate worth 3,000 *l.* or 4,000 *l.*, is it upon the whole cheap?—I do not think it unreasonable.

2921. Have you sold any estate in that Court which has been previously in the Court of Chancery, in which there has been a report of the Master, ascertaining the incumbrances and the rights of parties and the priorities?—I have.

2922. Have the Incumbered Estates Court made use of that report?—They have.

2923. And acted upon it?—And acted upon it. One estate, I think, produced 60,000 *l.*

2924. Is it not the case that they constantly adopt the careful report of the Master, and sell upon the faith of it?—They have allocated the funds upon the report.

2925. In that respect, the reports of the Masters, in cases where the same estates upon which they reported have afterwards been sold, have been of great use to the Incumbered Estates Court?—Doubtless; as for instance, they cannot themselves take cognizance of simple contract debts, but if the report of the Master ascertain those simple contract debts they in allocating the money will pay such debts.

2926. The substance of your recommendation to the Committee is to bring together into one tribunal and one locality, the advantages of the short and cheap system of sale in the Incumbered Estates Court, with whatever is useful and valuable in the Court of Chancery?—That is what I wish to convey.

2927. Mr. *Deasy.*] Have you any suggestion to make to the Committee with respect to any improvement in the office of Accountant-general in the Court of Chancery?—I see no necessity for the Accountant-general to attend at the Bank of Ireland every morning to do that which, in dealing with such large sums as the Incumbered Estates Court deal with, is done by the officers of the Bank, instead of the Accountant-general.

2928. Would that require legislative interference?—I cannot state that.

2929. Mr. *De Vere.*] You speak of transferring the functions of the Incumbered Estates Court to two officers, whom you call Title Masters, whom you would unite with the Court of Chancery?—Yes, Title Commissioners.

2930. You also propose to leave the present duties in Chancery to certain officers, whether Masters or Vice-Chancellors?—I do.

2931. Will you explain in what respect those new Title Masters would be a limb of the Court of Chancery; where would be the necessary connexion between them and the Court of Chancery?—Any new rules that they would make, I should have concurred in by the Lord Chancellor.

2932. Do you suggest anything by way of appeal?—Unquestionably. I would not have a Judge, who had decided a case, sit upon the re-consideration of his own decision, by appeal; and whatever jurisdiction you have in the Court of Chancery, I would have the same appeal made from the decision of those Judges, such as you referred to.

2933. To whom would you have the appeal?—I would have upon any Appellate Court three Judges, with a view that the opinion of the majority should bind. I have not considered the matter sufficiently to justify my giving a positive opinion, but at present I should propose the Chancellor, and one other Judge, selected, and possibly the Master of the Rolls; but I do not wish to express a positive opinion upon the subject.

2934. You have spoken of the Title Commissioners, or Masters, as a limb of the

the Court of Chancery; you have now explained that the connexion between them and the Court of Chancery would be only as regards the framing the general rules, and as regards appeals?—On consideration, I might perhaps think that it should extend further; but at this moment, I am not prepared to say how far that connexion should be extended.

2935. Was I right in understanding you to say, as one of your suggestions, that you would require from the solicitors an affidavit that they would not influence the sales to their own advantage?—Yes; that was to meet the case put by an Honourable Member as to the possibility of a solicitor buying an estate that he was himself selling, or any friend of his buying it under the value.

2936. You would impose upon the solicitors in the proceedings in the Incumbered Estates Court a species of test to which they are not subjected in proceedings of any other description?—They are subjected in the Court of Chancery to it in this respect, that the estate would be taken from them, if they bought it.

2937. They are not in the Court of Chancery subject to any affidavit in that respect?—If it is discovered, the estate would be taken from them.

2938. They would not in the Court of Chancery be called upon to take a solemn oath that they will not influence the proceedings to their own advantage?—I think that so much power rests with a solicitor having the carriage of a large estate, and there are so many parties interested in the result, that it would be but just; and I think that no solicitor ought to consider it an unreasonable imposition upon him to ask such a test.

2939. *Chairman.*] It being proved to the satisfaction of the Lord Chancellor that a solicitor having the sale of an estate in the Incumbered Estates Court, collusively himself became the purchaser, would he not be struck off the roll of attornies?—With regard to the word "collusive," I could not say; but he might become the purchaser of an estate, although he might not act collusively.

2940. Independently of refunding, would he not be struck off the roll?—If he collusively depreciated the value of an estate, with a view of himself becoming a purchaser, I have no doubt that he would.

2941. Mr. *Walpole.*] The mere fact of purchasing an estate would not subject him to be struck off the roll, if the full value was brought?—No.

2942. The mere fact of a solicitor purchasing an estate does not of itself entitle the Court of Chancery to set aside the sale on the ground of fraud?—Certainly not.

2943. It is only the circumstance that the Court of Chancery considers?—I do not suppose that the Court of Chancery would take cognizance of a purchase made by a solicitor in the Incumbered Estates Court.

2944. *Chairman.*] Not if he had the carriage of the sale on behalf of his client?—I apprehend not.

2945. Mr. *Walpole.*] Is he not subject to exactly the same rules as a solicitor in the Court of Chancery where he has the conduct of the sale of an estate in the Master's office?—I would not allow an estate to be purchased by any solicitor having the carriage of that estate.

2946. Is he not subject to exactly the same rules as a solicitor in the Court of Chancery, where he has the conduct of an estate in the Master's office?—I should be disposed to think that the Chancellor would send back the consideration of the matter to the Judges of the Incumbered Estates Court.

2947. *Chairman.*] If those facts were investigated by the Lord Chancellor, and he satisfied himself that the estate had been sold below the value, and had been purposely sold below its value to the solicitor conducting the sale, would not a solicitor so acting be amenable to the Lord Chancellor's jurisdiction?—I have no doubt that either the Lord Chancellor would take cognizance of it, or would put it in such a shape of inquiry that it would be got at; but I do not think that any solicitor would object to make the affidavit which I spoke of.

2948. Mr. *De Vere.*] Is it not the fact that there is a positive rule in the Incumbered Estates Court binding solicitors to submit the title to counsel?—No, I think not.

2949. You made another suggestion with respect to the registration of wills; within what period would you render than necessary?—Two years after the death of the testator; such a time as would enable a purchaser for valuable consideration to deal with the estate.

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2950. That is with the view of meeting cases in which you think wills have been fraudulently kept back?—Yes, solely.

2951. That would also apply to cases in which wills have been unintentionally kept back?—It would.

Mr. *Richard King*, called in; and further Examined.

Mr. *R. King.*

2952. *Chairman.*] HAVE you any explanation to give of your evidence on a former day?—At Question 2591 I was directed to state the different duties that I had to perform, and in doing that I omitted a very important duty, which is to answer questions of solicitors relative to the practice. They are constantly making applications upon that subject; and I have also, in some degree, to control the practice as to when parties are entitled to do certain acts; and that becomes the more important, as at Question 2593 I was asked, had I the means of giving the Committee any information as to the course of procedure in the chamber where the Master sits and disposes of business; I was asked that, in order to show whether I was qualified to give the evidence which I was about to give; now I wish to state that it is not in the chamber where the Master sits that a knowledge of the details of the practice of the office is acquired; it is in the outer chamber, where the clerk holds continual communication during office hours with all the different solicitors and persons coming to transact business. At Question 2676 I was asked if the receiver was not bound to account every year, and I stated that he was; that was an oversight; for a receiver, when first appointed, has 15 months to pass his first account, and 13 months to pass every subsequent account.

2953. Mr. *Whiteside.*] With regard to the subject of receivers, did you read the Report of the Receiver Committee, upon which the Right honourable Chairman sat?—I did.

2954. Have you read the Bill which bears my name, called "the Receiver Bill"?—I have.

2955. Does that Bill carry out many of the suggestions contained in that Report?—It does.

2956. In reference to the suggestion of that Committee, that no receiver should be appointed, unless there was a debt due to the amount of 150*l.*, does it occur to you that the fifth section of this Chancery Bill proceeds upon a more sound principle, by limiting the appointment of receivers, not so much to the amount of the debt as to the annual rental of the property?—I think it would be a great hardship, if a man was possessed of a large property, and that a creditor to a small amount should not be able to take proceedings to enforce his debt; and therefore it is more with reference to the amount of the property that you should consider the propriety of appointing the receiver, than the amount of the debt due.

2957. If this Bill should become law, that the Court should have authority to appoint a receiver where the rental did not exceed 200*l.* a year, would that exclude from the receivership system a vast amount of small estates?—Yes.

2958. You perceive the clause of this intended measure giving power to the Receiver Master to make leases for a fixed time?—Yes; it was recommended by that Committee that the tenure should be extended to not less than 14 years.

2959. This Bill goes a little further, to give power to a Receiver Master to give a lease to the amount of 21 years; would that be a great benefit to the tenant and to the country?—It would be a benefit to the tenant and to the estate.

2960. With regard to the other propositions; for instance, a cheap mode of bringing to an account, instead of by the circuitous mode of going on the recognizance, would that be a benefit?—I think that the present mode is very cumbrous; and one of the improvements that I would suggest would be, that the receiver should make an account to the Receiver Master. The Receiver Master should be at liberty to send him a letter, and if he did not account in pursuance of that letter, he should be removed. At present the mode of compelling a receiver to account is by issuing a summons, upon which there is a 13*s.* stamp, and it must be personally served on him, and an affidavit produced; and very often a receiver will keep out of the way to avoid personal service, and there is both loss of time, and expense incurred by this process; whereas I think the receiver ought to be bound to account, by a letter addressed to his residence from the Receiver Master's office; and in that way I would make the receiver more an officer of the court than at present, because he may go on for several year without accounting, unless the parties proceed against him.

2961. Does

2961. Does that mischief of the receiver evading the process of the court often occur?—I cannot say that it very often occurs, but it does occur where a receiver lapses his time, and is allowed to remain for two or three years without accounting. It is not at all unusual that he does evade service when the parties do not compel him to account regularly.

2962. And until he is served, you cannot attach him?—That is the course of the court; but the court might order it under special circumstances.

2963. Mr. *Grogan.*] You have known instances of the kind?—I have, many.

2964. Mr. *Whiteside.*] Section 30 of the Receiver Bill, which bears my name, is as follows: "If any receiver shall not have accounted within a year of the date of his appointment, or his previous account, it shall be the duty of the Receiver Master before whom he should have so accounted, or one of the clerks before mentioned, without any intimation or request from any of the parties in the case, to call upon such receiver by letter to account for his default." Does that meet with your approbation?—It does; I think it should be the duty of the Receiver Master to make the receiver account annually, whether the parties require it or not.

2965. Do you hold it to be a mischief to allow receivers to be appointed upon judgments converted into mortgages, in the way that has been described to the Committee, by the registration of them?—The circumstance of an Act having been passed to prevent a receiver being appointed upon a judgment under 150*l.*, is evidence that it was considered a very great mischief, otherwise a legislative enactment would not have been made, consequently an evasion of that must be productive of similar mischief.

2966. Do you think that a receiver ought to be appointed by the Receiver Master without reference to the attorney nominating, or to any of the parties nominating, but solely with reference to his fitness as an agent?—I think that the present modification of the practice, so far as it has been effected, has been an improvement, in taking the receiver out of the hands of the parties. I consider the more you do that, the more you improve a bad system, and the more you improve the practice.

2967. Mr. *E. Ellice.*] Do you not think that a better remedy for this evil of receivers would be not to permit any creditor, upon judgment or mortgage, to apply for a receiver, except in cases where there were disputes about the priorities of the incumbrances upon the land?—You must always have receivers, because some suits are instituted for the purpose of recovering annuities, which can only be done by continuing receivers. Then there are receivers in minor and lunatic matters that cannot be dispensed with, and there may be receivers in the case of tenants for life.

2968. Admitting that you cannot dispense with receivers in cases of lunacy or minors, or other cases of that description, when you give a direct remedy to a creditor upon land, such as he has now through the Incumbered Estates Court, what necessity is there for giving him a power of applying for a receiver upon those estates?—I think, if the practice of the court was reformed, and as soon as it was ascertained that the suit should result in a sale, a sale was ordered; by that means you might have the estate sold in a shorter time than a few years ago you could have had a receiver appointed. According to the old practice, which existed prior to 1850, when a bill was filed the parties considered themselves very well off if they got a receiver after one year, and sometimes within two. By the improved practice of the court, I think the sale could be had in most cases before one year; that is, before the time that they could formerly have had a receiver.

2969. A remedy having been provided by the legislature for the difficulties of proceeding against land and obtaining a sale, why is it necessary that the old practice adapted to time before the appointment of the Incumbered Estates Commission should now be persevered in?—I thought in my previous answer I endeavoured to express my opinion, that it should not be persevered in.

2970. Do you know anything of the practice of England upon that subject?—I understand that in England a mortgagee can go into possession himself.

2971. Would not that be a better practice in Ireland, than incumbering the court with this multitude of receivers?—I should feel great hesitation in giving an opinion upon that subject, because I find that Sir Edward Sugden has given an opinion, that the English practice would be desirable in that respect to be introduced into Ireland, and the present Master of the Rolls has given a contrary opinion.

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2972. Mr. *Whiteside.*] Pursuing the question put by the Right honourable Gentleman, is not this Receiver Bill framed on the principle of assimilating as much as possible the practice as to the appointment of receivers in England and Ireland?—I think it is.

2973. Do you see any reason why a mortgagee should obtain a receiver in Ireland upon the same state of facts upon which he would not obtain it in the Court of Chancery in England?—I do not.

2974. Or that a judgment should be converted into a mortgage?—No.

2975. Therefore, in your opinion, is not it as useful as possible to limit the number of cases in which receivers are to be appointed, besides endeavouring to reform the practice of the receiver system itself?—I think it is very desirable.

2976. Do you approve of the principle attempted to be introduced by this measure, that no barrister, solicitor, or attorney should be a receiver?—I do, to a certain extent. If the barrister or the practising attorney is to reside in Dublin, I think that there is a great objection to his being a receiver; but a great many solicitors reside in the country; I cannot see any objection to men residing in the country being receivers because they are solicitors. On the contrary, I think you insure a greater amount of ability and intelligence for the discharge of the duties. There are a great many men residing in the country who do their business through town agents.

2977. Has not a solicitor an opportunity of increasing the costs upon an estate by proceedings against the tenantry that an ordinary receiver would not have?—I think not; an ordinary receiver can do nothing without a solicitor. Everything in connexion with the appointment of a receiver, I think, is in a very unsatisfactory state. The rule of the court excludes barristers and solicitors from being receivers; but the court expects that every receiver who is appointed will possess the knowledge of both. If his duty was merely to manage the land and receive the rent, a country gentleman would be capable of doing it; but he has not only his duty as a receiver of the rents, but his duty to the court to attend to, which is very complex, and he has no means of acquiring the knowledge which he should possess as receiver in his dealings with the court. The rules which govern the receivers are probably to be collected from voluminous legal reports, and there are no set regulations for the information and guidance of a receiver, and I think that a most material alteration or improvement would be, that a proper code of rules should be prepared; and that on a receiver being first nominated and approved of, it should be furnished to him gratis from the Receiver's Office, by which he might acquire a knowledge of the duties that he had to perform in his operation at court, as well as in his operations with regard to the land.

2978. Do you see that it is provided likewise by this measure that those regulations should be handed to the receiver, so as to make him resemble, as far as possible, an ordinary agent upon a gentleman's estate?—Yes.

2979. Are the Committee to understand that the receiver, in the case which you have put, has his separate solicitor; the plaintiff has a solicitor and the defendant has a solicitor?—It is so; and by rules of the court the receiver is bound to have a separate solicitor.

2980. Is that separate solicitor paid his costs, as solicitor, besides the receiver being paid his per-centage as receiver?—Yes, all the costs; and the solicitor for the receiver has this advantage, that his costs are always paid out of any funds that the receiver has in his hands.

2981. Mr. *De Vere.*] Your answers to the last three questions would go to this, that all receivers, whether solicitors or not, have an interest, whether direct or indirect, in accumulating costs upon the estate?—Every solicitor must have an interest in it. What I intended to express was, that the estate was not in a worse position by having a solicitor as a receiver, than by having a receiver who could not act without having a solicitor at his hand at every movement.

2982. Mr. *Whiteside.*] It is the system that you are describing; it is necessary for the receiver to have a solicitor?—According to the existing state of the practice he cannot do without one.

2983. And that gentleman must be paid for his work?—Yes.

2984. Is he paid out of the funds in the hands of the receiver?—Yes, after the head rents or other similar demands are paid.

2985. Can you inform the Committee whether there was a more just or liberal system acted upon in managing estates of minors and lunatics under the Court of Chancery than in managing the estates of incumbered proprietors, where a creditor has

has obtained the receiver?—The Masters think that they have more power, and they exercise a greater power over the estates of minors and lunatics, by making allowance to the tenants, abating rents and remitting arrears, and allowances for repairs and improvements; they consider that their jurisdiction is more extensive.

2986. Do you see any reason why the Receiver Master should not have the same power, in the case of creditors receivers that he has in estates of minors and lunatics?—I think that a want of that power is prejudicial to the parties themselves, because an estate that is a few years in the Court of Chancery is always brought into the market for sale, deteriorated in value by reason of the very confined powers the court possess in opposition to the will of a creditor.

2987. Do you observe that this Bill proposes to give to the Receiver Master the same power in reference to the Incumbered Estates Court, that the court exercises according to the evidence given by Sir Edward Sugden, over lunatics' estates and minors' estates?—I think it enlarges the powers at present possessed by the Receiver Master very much.

2988. Do you observe that there is in one of these Bills a power which would meet the case, put by the Right honourable Gentleman, to direct a sale in the first instance, in cases where they see that there must eventually be a sale?—I think there are two different provisoes, one in the Procedure Bill, and another in the Receiver Bill, nearly to the same effect.

2989. That is to quicken the sale in the first instance; it being clear that there must be a sale so as to prevent the necessity of appointing a receiver?—To effect a sale at the very earliest opportunity that it is ascertained that there must be a sale.

2990. And so to dispense with the necessity of appointing a receiver?—Yes.

2991. Did you compare the Bill No. 1 with the Bill which was framed under the direction of the Chancery Commissioners in this country?—Yes, I read them both very attentively.

2992. Is there any difference between them save the conversion of three of the present Masters into Vice-Chancellors in name; is that the principal distinction, is not the Bill nearly identical with the Bill which passed a short time ago in England for abolishing the Masters' offices?—Both the Bills, so far as they relate to the procedure of the Court, seem to be framed upon the same principles to a certain extent as the Acts passed in the year 1852, the 15 & 16 Vict., c. 80 and 86.

2993. Did you observe that there were separate Bills in England to remodel the Court, and then to arrange the procedure for the Court so remodelled?—Yes, there were two Bills in England.

2994. You have stated that the Masters at present in Ireland do exercise in a great measure the duties of the Vice-Chancellors in England?—They do in cases under the 15th section of Sir John Romilly's Act.

2995. This Bill proposes to make them nominally Vice-Chancellors as well as really in those cases; do you think that they would have more time, and would it be more for the despatch of business if that reform was carried out in all other cases, which has been so effectual in the cases under Sir John Romilly's Act?—I think if you gave the Masters a proper staff, which they are very much in want of at present, and have been for a great number of years, they would be able to effect that with great advantage.

2996. Would this procedure in No. 2 Bill be, in your judgment, an improvement upon the practice of the Court of Chancery at present?—A very great improvement, in my opinion.

2997. Does it correspond with the reformed practice in this country in essential particulars?—So far as the practice is indicated by those two Acts to which I have alluded, and by the general orders that have been made since those Acts, in the Court of Chancery, it does agree with them; it incorporates a great many of the general orders of the English Court of Chancery, and it incorporates a great many of the general orders of the Irish Court of Chancery at present.

2998. Does it occur to you that it would be a useful thing, if possible, by positive statute to make those useful orders law in Ireland, that have been prepared for England?—Where an improvement has been effected by a general order, and has stood the test of two or three years' experience, I think it desirable

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that the Bill should be as definite as possible, and should incorporate everything in the shape of an improvement that it is intended to carry out.

2999. And that with a view of securing a uniformity of practice, not leaving it discretionary with the Court in Ireland to adopt, in matters of practice, that which has been ascertained in England by experience to be good, or to adopt a different practice?—There are some leading principles that have been carried out by general orders in England; one of them is the abolition of charges and discharges. A Commission sat previously to those Acts of 1852, and there were two immense volumes of evidence, and all the witnesses agreed in condemning the practice of the Court of Chancery in the Master's office. That recommendation was not carried out by the English Act, but it was carried out subsequently by general orders in the Court of Chancery, and those general orders are incorporated in the Bill to which you allude, and properly so, I think.

3000. All those charges and discharges, and those cumbrous proceedings that were condemned by the Chancery Commission in England, are abolished by this proposed measure?—Yes.

3001. Would that be a great saving of expense to the suitor?—Immense.

3002. Would it likewise afford more time and opportunity for the despatch of the other and real business of the country?—A great deal of the time of the present Masters is occupied in doing matters that could be as well, if not better done, by a clerk, and any reformation of the practice, giving them a sufficient staff to enable them to transfer that description of detail matter to their clerks, and confining their own services to the more legitimate office of a Judge, in disposing of matters of fact and of law which are controverted, would give the Masters a great addition to their time.

3003. *Chairman.*] The Masters with the extended jurisdiction beyond the 15th section of Sir John Romilly's Act, would really be Vice-Chancellors, would they not?—They would.

3004. Whatever their name might be?—Whatever their name might be.

3005. Their powers and functions might be those of Vice-Chancellors?—Yes.

3006. Mr. *Whiteside.*] Do you perceive that by this Bill there is a clause which prohibits an appointment, upon the resignation or death of any of the existing Masters; that his place is not to be filled up, unless upon some statement made before Parliament?—With respect to receivers, there are two Receiver Masters contemplated by your Bill, and there is a provision that on the death of one, his place is not to be filled up, unless it shall appear to be necessary; but a similar restriction does not exist, I think, with respect to the Vice-Chancellors.

3007. It is proposed to leave three of the present Masters, who will be in reality Vice-Chancellors, to be called Vice-Chancellors; what is your opinion as to the necessity, at present, of having three. The Bill is framed upon the supposition that they will hereafter sell all the estates of incumbered proprietors that are now sold by the Incumbered Estates Court?—I think that less than three could not perform the duties, and I even doubt whether the three could do it satisfactorily; but certainly not less than three. Any reformation that takes place now in the practice will necessarily cause an increase of business; it has always done so.

3008. Assuming that the Masters have obtained the moderate staff which is proposed, the Committee wish to be informed whether those three Masters called Vice-Chancellors, and the Master of the Rolls, would be competent to transact all the business of the Court of Chancery, and at the same time to dispose of the sales of estates of incumbered proprietors with a Parliamentary title, in like manner that the Incumbered Estates Court now does?—If you do not transfer the arrears to them, I think they would be quite competent to perform the accruing business, in point of time.

3009. According to your experience, and according to the best of your knowledge, would the three Masters, supposing them to be relieved of this cumbrous and unnecessary procedure by which they are now embarrassed, and supposing they obtained the staff which is proposed by this measure, be able, without allowing any accumulation of arrears, to sell the incumbered estates, and to make the title to them, in the same manner as the Incumbered Estates Commissioners now do?—I think they would.

3010. Do you see any difficulty whatever in the Masters who have been accustomed to sell estates and to make titles under a less simple system, selling and making

making a title under the system now in force in the Incumbered Estates Court?—None.

3011. Have the Masters, for the 40 years that you have known them, been in the habit of selling estates?—They had, to a very large amount, till the existence of the Incumbered Estates Court.

3012. Did the Masters preside in person at the sale?—Formerly the Masters always presided in person at the sale, but in latter years, when they have been very much pressed with business, the present course of practice, I believe, has been that the Master's examiner or chief clerk, takes down the terms of the sale, and probably takes the biddings, but the Master always declares the purchaser.

3013. Do you think it an advantage to have a person of the authority and knowledge and experience of a Master presiding at the sale?—I do to that extent, that he should do the substantial business, but not the manual work.

3014. Have the Masters been in the habit of investigating titles?—They investigate them in two ways. Before the sale there is a slight investigation: one of rules of the court requires that the Master shall ascertain that the statement of title has been a substantial compliance with the previous rule which requires the title to be submitted to counsel, before he gives a posting; under that rule, the Master before he gives a posting, looks through the title to see that it has been substantially prepared; and in Master Henn's office, after the counsel gives his opinion that there is a good title, subject to certain searches, he causes the searches to be procured and submitted again to counsel, to ascertain if there is anything appearing on the searches to make him alter his previous opinion. Then when the estate is sold, if the purchaser objects to the title, there is a reference to the Master to report on it, and then the Master has very difficult questions of title coming before him, and he looks upon those and investigates them in that way.

3015. Have the Masters been in the habit of investigating titles in that way?—Yes, it is one of their most important and heaviest duties. Prior to the institution of the Incumbered Estates Court there was very seldom a sale to a large amount in which the purchaser did not take objections to the title; sometimes for the purpose of getting out of his purchase, he would make some formal objection; at other times they thought it necessary to have the opinion of the court upon the title.

3016. And Masters have decided those questions?—They have decided those questions.

3017. Would there be any difficulty, in your judgment, in giving them, by this Bill, the same powers now possessed by the Commissioners of the Incumbered Estates Court?—I do not think there would be any difficulty; it would throw some additional labour on them.

3018. And each of the three Masters, and the Master of the Rolls, in a separate court, may order a sale, and direct it?—It would be so.

3019. And therefore there would be four separate tribunals, each directing and superintending the sales?—Yes.

3020. Is it your judgment that, for the future, those four officers that now exist could sell estates so as to prevent the accumulation of an arrear?—I think they could.

3021. If the staff proposed be given them?—Yes.

3022. And the same class of questions that have been investigated by the Incumbered Estates Commissioners, that is, questions of title, will be investigated before them as they have been before?—I think much more important questions come before the Masters, because the Incumbered Estates Commissioner takes the title as it appears, but questions are often brought before the Masters, and argued with the greatest ingenuity, for the purpose of getting out of a purchase that the purchaser does not like, and therefore he has been more critical in inquiring into titles.

3023. This Bill proposes to engraft upon the Court of Chancery, reformed, the powers now possessed by the Incumbered Estates Court, and it is your opinion that those powers could be safely entrusted to those gentlemen?—Yes.

3024. You think that they will safely execute them?—Yes.

3025. What is the staff which you think would be sufficient, supposing those Masters were called Vice-Chancellors, and entrusted with this amount of public business?—It is impossible that they can do without a registrar, to be constantly in attendance on them during their sittings, and to make out their orders, and two junior clerks. I think that one chief clerk for each Master would be quite sufficient; in other words, two chief clerks, and one of them to act as registrar.

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3026. What is the existing staff of each office?—The chief clerk who is called the examiner, and the assistant clerk, and in addition there is a a permanent scrivenery clerk who cannot be done without, but there is no salary provided for him; he is merely remunerated for his labours at so much a folio.

3027. So far as the capabilities of the two officers extend, would you propose to make use of their services upon the new scheme?—Decidedly; and while upon that subject if the Committee permit me, I will read a letter written by the late Chancellor the Right honourable Francis Blackburn to Mr. Stanford.

3028. What are the duties that are to be discharged by the examiner of the Master; is it a sinecure office, or not?—It is very far from it.

3029. Will you state the duties of the Master's examiner?—He has to administer oaths, and to examine witnesses, and to fill leases and recognizances when required, and he has to vouch the receiver's accounts which are passed; between 200 and 300 are passed in a year, and in addition to that, where accounts a reheavy, such as in the case of executors, or administrators, or trustees, the Master for the purpose of saving time gives him those to vouch. He has also to a great extent to assist in comparing, before signature, reports and orders, and matters of that kind.

3030. What is the age of Mr. Stanford?—He is 43 or 44.

3031. And what is the age of the other gentleman, Mr. Smith?—I believe Mr. Smith is something about the same age; probably not so old.

3032. Is this letter which you wish to read the testimony of the late Lord Chancellor to Mr. Stanford's efficiency?—Yes.

3033. Are you fully occupied?—Very.

3034. Are you well acquainted with the practice of the Court after 40 years' experience?—I believe I have that reputation.

3035. And you are not unfavourable to the reform of the abuses which you have witnessed?—No; I have always deplored the waste of property that I have seen on many occasions.

3036. Are those gentlemen whom you have mentioned competent to perform the duties of examiners?—Very competent.

3037. *Chairman.*] Is Mr. Stanford a barrister?—No, a solicitor.

3038. What is his age?—I think it is about 45.

3039. Is he any relation of Master Henn?—He is.

3040. What relation?—Son-in-law.

3041. Was he the son-in-law of Master Henn when he was appointed?—About the time that he was married he was appointed, or shortly after.

3042. Was he married to Master Henn's daughter before or after his appointment?—I believe before the appointment.

3043. Mr. *Whiteside.*] He filled the office of registrar before then, did not he?—He did.

3044. He was a solicitor?—He was a solicitor.

3045. And an active man?—He was an active man.

3046. Do you believe that a solicitor is competent to perform the duties of an examiner?—I do; I think that the best qualification a man could have for the duties of that office would be six or seven years spent in one of the under offices; it affords him a greater opportunity of acquiring a knowledge of the practice and the business he has to perform. A man in two or three years' experience in one of the Masters' offices, in the situation which I hold, sees a greater variety of practice than a solicitor in ordinary circumstances would see in the whole course of his life. There are between 600 and 700 cases of every possible variety always going on in the Master's office from year to year.

3047. Whereas a solicitor would only see those falling within his own immediate practice?—Yes, just so. I was some time ago applied to by a solicitor for information as to the proceedings necessary to be taken in order to bring a property to sale. He stated he had been 40 years a practising solicitor, and that was the first time he had ever had a sale in the Court of Chancery.

3048. *Chairman.*] Who is the examiner in Master Litton's office?—His son.

3049. Is he a barrister or a solicitor?—I believe neither.

3050. What was he before his appointment?—He is a young man, and he has not been long appointed.

3051. Was he ever in the army?—I heard that he got into the militia as a matter of form.

3052. Do you think that he would make a good first clerk to a Vice-Chancellor?

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—I think he would, after a little practice and experience. I believe he distinguished himself very much at College, and is a clever man; he has passed through the University.

3053. Mr. *Kirk.*] What time do those gentlemen come to their offices in the morning?—About eleven.

3054. How long do they remain?—I cannot speak for them all, but Mr. Stanford remains there the entire day during office hours, from eleven till four, during the sitting of the Court.

3055. Does he do any business out of Court?—He does not.

3056. You think that it is a very large amount of business to do for six or eight months in the year, five hours a day?—I do.

3057. Mr. *De Vere.*] Is it not a fact that Mr. Stanford has performed those duties in a manner most satisfactory to the public, and with great diligence and intelligence?—It is; and if I may be permitted I will read this letter: "26 April 1856. My dear Stanford, I have not the least hesitation in testifying my opinion of your qualifications for the discharge of the duties of the office which you hold in the Court of Chancery. That they were performed with aptitude and to the perfect satisfaction of the suitors, I have every reason to be assured. Indeed, I should be surprised at any assertion to the contrary, from having had for many years ample opportunities of witnessing the ability with which you acted in other affairs requiring steadiness, accuracy, and habits of business. Very faithfully yours.—F. Blackburn."

3058. Mr. *Whiteside.*] This gentleman has always been acting; not as a solicitor?—I cannot state.

3059. Has he been always acting in the profession of the law?—He has.

3060. It has not been uncommon for other Judges in Ireland to appoint their relatives?—I believe it is not uncommon for any one who has a situation to give away, to give it to a relation.

3061. In reference to the chief clerks, would it not be well to have the veto of the Lord Chancellor upon the persons who might be appointed hereafter chief clerks?—I do not know. The Chancellor probably might know very little about them.

3062. Has the present Chancellor appointed his own son to an office?—I think he has.

3063. Mr. *Deasy.*] What is the office?—The son of the Chancellor is his secretary.

3064. Mr. *Whiteside.*] Have you any arrangements made for the reception, if it were transferred to your office, of the arrears of business in the Incumbered Estates Court, or any means of doing it?—We have no offices, and there are at present no means of doing it. The Masters themselves have not as much room as they require. An application was made by the Masters shortly after the Act of 1851, for an additional apartment, which they could not get.

3065. Is it practicable for the business of the Incumbered Estates Court to be satisfactorily done by being thrown into the Court of Chancery?—I believe that it would upset the business of both Courts, and that it would be absolutely impossible to do it.

3066. Are you acquainted with the financial department of the Court of Chancery; do you understand it?—I do, to some extent.

3067. Will you state to the Committee what is the state of the finance?—The finances of the Court are in a very complicated state, some officers receive fees which they retain for their own use; other officers receive fees out of which they pay themselves and lodge the residue, some, in the Consolidated Fund and others in the Suitors' Fee Fund, and other officers receive fees and pay them over at once to the Fee Fund, and are paid their salaries out of it. There are three funds.

3068. Will you state those three funds?—One of them is the Bankruptcy and Compensation Fund.

3069. What is that?—That is composed of the fees received in the Bankruptcy Office, and paid over to that particular fund for the purpose of meeting the salaries of those officers; but there is a provision, that in case it is not sufficient, any deficiency is to be made up out of the Suitors' Fee Fund; and as the Bankruptcy Fund is always deficient (at least as far as is indicated by the Returns) the residue falls upon the Suitors' Fee Fund.

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3070. Will you describe that fund?—Before you come to the Suitors' Fee Fund, there is the Compensation and Fee Fund.

3071. What is that?—That is composed of the interest or dividends on the sum of 200,000 *l.*, set apart in pursuance of an Act of Parliament passed in 1834, I think, to pay compensations to certain officers, whose fees and emoluments were reduced by the operation of an Act passed at that time, the 4th and 5th of William the Fourth, cap. 78, that is the Compensation and Fee Fund and the other is called the Suitors' Fee Fund.

3072. What is the first?—The first is under the 4th and 5th of William the Fourth, cap. 78.

3073. What do you call that?—The Compensation and Fee Fund.

3074. How is that levied?—That is the interest of 200,000 *l.*

3075. How is that interest applied?—In payment of the compensations for which it was created.

3076. To whom?—Compensations to the officers whose fees were reduced at that time; and since that the offices themselves have been abolished, and that fund is in effect amalgamated with the Suitors' Fee Fund, which was established some time after.

3077. Does that first fund meet the charges upon it?—No; all the funds are bankrupt at this moment.

3078. Was that first fund equal to the charges put upon it?—I think it was.

3079. What rendered it unequal afterwards to meet the demands upon it; was it the voting compensations to other officers whose offices were abolished; I believe that is a common practice in Ireland?—I think it was barely sufficient for the purposes for which it was created first; and then the principal officers who got compensation out of that fund were the Six Clerks, and by a subsequent Act, two years afterwards, the office of the Six Clerks was altogether abolished. They first got compensation for the reduction of their fees, and then compensation for the abolition of their offices. The fund went on very well, and was quite sufficient for all purposes, till the passing of Sir John Romilly's Act in 1850. At that time there was a surplus of these funds; but since then, in consequence of the change of practice, a great many of the sources which fed that fund have failed, for instance, the pleadings and the fees that were received for them, and the consequence is, that since 1850 the fund has been getting every year gradually worse, till within the last two years, when it has become altogether bankrupt.

3080. What is the third fund?—The Suitors' Fee Fund is included in that history which I have given.

3081. How is that Suitors' Fee Fund composed?—Of fees received in different offices, and paid into that fund; for instance, the Affidavit Office, and the Masters' Offices, and the Clerk of Appearances and Writs, and the Registrar's Office. They paid annually very large sums (after paying their own expenses) into that fund till 1850; and the change of practice since then has created such a difference in the receipts that the fund has since became insolvent.

3082. Mr. *Walpole.*] That observation only applies to the Suitors' Fee Fund, and not to the Compensation and Fee Fund?—They are all substantially merged into one, though they have different titles.

3083. Mr. *Whiteside.*] Does the Consolidated Fund ultimately pay the difference?—It was perfectly notorious a year ago that some of the charges on those funds could not be paid. The Accountant-general had no money to pay them, and there was some delay till a sum of money was received from the Treasury for the purpose.

3084. A great deal of this want or deficiency has been created by the abolition of offices, and by the necessary result of throwing the compensations upon this fund?—To this extent I believe there is a dead weight at present for compensations of about 20,000 *l.* a year on those funds.

3085. For compensations to officers?—To the Six Clerks and other officers.

3086. *Chairman.*] Is there a residuary charge upon the Consolidated Fund, failing the adequacy of the Suitors' Fee Fund, and the other two funds which you have mentioned?—In some instances. As regards the Six Clerks, I think there was a provision, that in case the funds became short, they were entitled to be put upon the Consolidated Fund; but with respect to a great many of the officers, they have no strict right to resort to the Consolidated Fund.

3087. How was it, when there was a deficiency last year, that a payment was made

made out of the Consolidated Fund to meet the deficiency, unless there be a legal sanction to that operation?—I do not know how that was done, but it was done.

3088. Mr. *Walpole.*] Do you think that it was done out of the Consolidated Fund, or out of an annual vote?—I cannot tell, but the money came from the Treasury, as I heard.

3089. Upon what principle was the compensation given to the Six Clerks?—I think that the amount was ascertained.

3090. What amount?—The amount of the compensation was ascertained upon the average of the profits of the office for the three years preceding. The Six Clerks were officers who had purchased their offices and had a vested interest in them, and therefore it was conceived that they were entitled to compensations: first, when their fees were reduced from what they had been established at, and on the second occasion when they were altogether abolished.

3091. Mr. *Whiteside.*] Have you read over the proposed schedule of fees, Schedule G to this Procedure Bill?—I have.

3092. According to your knowledge and experience, supposing the Consolidated Fund is not to bear all the expenses of the working of the Court of Chancery, would that be a scale that would be fair and just to the suitors?—I think it is more equally diffused over the proceedings than the present stamps and fees, and would be fair and just; it does not exceed in amount, and in many instances it is less in amount than the present fees collected in the same way in the Court of Chancery in England.

3093. It is not higher, but it is lower than the scale proposed, and now in force in the Court of Chancery in England?—Yes.

3094. If the accruing business of the Incumbered Estates Court be transacted in the Court of Chancery in the way suggested, will the accruing business of the Incumbered Estates Court so done in the Court of Chancery contribute to the expenses of the Court like every other department of the business of the Court?—As I understand the proposition it will not be the business of the Incumbered Estates Court, but an increase in the business of the Court of Chancery, therefore it will be subject to all the conditions attached to every other business in the Court of Chancery.

3095. At present the Incumbered Estates Court, which is not far from the Court of Chancery, is exempted from fees, whereas the proceedings in the Court of Chancery are subject to fees; is not that an anomaly, in your opinion?—Indeed I think it is; but the habit of getting business done for nothing in the Incumbered Estates Court has so spoiled the taste of solicitors for paying any fees, that they are always finding fault with the Court of Chancery for charging.

3096. If that practice of the Incumbered Estates Court of paying nothing be transferred with the arrears into the Court of Chancery, could you give any estimate of what would be the loss to the Consolidated Fund, provided the Court of Chancery were to transact business on the same terms?—I think there would be a loss of at least 30,000*l.* a year; I think that the present fees and funds collected in the Court of Chancery amount, as nearly as I can estimate it, to 30,000*l.* a year.

3097. *Chairman.*] What would be the taste of solicitors and suitors in England for paying fees in Chancery if those in Ireland were exempted?—I think it is likely that their taste would become vitiated.

3098. Mr. *Walpole.*] You would like the practice in the two countries to be assimilated?—It never could be effected except there were a revolution in the practice either in England or in Ireland. In England you still have the old system of pleadings by bill and answer, which has been abolished in Ireland by Sir John Romilly's Act of 1850.

3099. *Chairman.*] In the Bill to which reference has last been made, the fees, though newly shaped and regulated, are to be fixed by Act of Parliament?—Yes.

3100. Do you think that an expedient course; would it not be better to give to the Lord Chancellor and the Master of the Rolls the power of regulating those fees, and charging them from time to time, not having them immutably fixed by Act of Parliament?—That is a question which I am not prepared to answer.

3101. Would you think it better that the Supreme Judges should have the power of regulating the fees and stamps from time to time, and varying them, rather than having them immutably fixed by an Act of Parliament?—I am not prepared to say; but this I believe, that there is a dislike felt by the Judges to interfere in the fees. At the time that Sir John Romilly's Act was passed, some

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documents upon which fees were paid were abolished, and other documents, for instance, Masters' orders, came into operation, for which there was no fee assigned; and the consequence of that was a great loss, but still the Court did not provide any fee for the new practice.

3102. Have they the power?—They have the power. They have the most extensive power given by the Act of 1823, over everything of that kind, both over the practice and the fees, and even over stamp duties.

3103. Did not Lord Chancellor Sugden exercise great powers, and make large reforms when he was Chancellor of Ireland?—Yes.

3104. Did he not exercise them with reference to fees?—No, not with reference to fees. I do not recollect that he made any alteration in that respect. The present Chancellor has done so to a trifling extent.

3105. Mr. *Whiteside.*] You think that there is an indisposition in the heads of the Court to lay fees upon the suitors, and that it might be convenient if that could be done, giving them the power to alter the stamps and fees?—That is the impression on my mind, that they do not like to create fees; it is always an unpopular thing to create fees.

3106. Have you any other suggestion to make, in reference to the best method of reforming the Court of Chancery in Ireland, that you desire to make to the Committee. You observe that the Attorney-general's Bill proposes to remove all the staff of the Court of Chancery, and of course to pension them off; do you think that necessary?—So far as I am concerned, I should be very sorry to be pensioned off. I have spent my whole life in the expectation that some time or another I should get some little promotion; for the salary, I conceive, is very inadequate to the duties I have to perform; and it is a general complaint in the Court, that all the subordinate officers are very badly paid; and so impressed were the Masters with that, they backed an application on our behalf to get an increase of salaries some time ago, but we did not succeed.

3107. I believe the Masters in Ireland are better paid than in England; the senior Master has 3,000 *l.* a year?—£. 3,000. a year, Irish; he has some compensations; the salary of the Master is fixed at 2,500 *l.* a year British at present.

3108. From your knowledge of the officers of the Court of Chancery, are you of opinion that they are still competent to their work, and acquainted with their practice?—They are a very respectable body of men.

3109. Mr. *Kirk.*] Would they be able to do any more business if they commenced work at 10 in the morning and remained till five?—Perhaps so.

3110. Mr. *Whiteside.*] Were you well conversant with the taxation of costs?—Very.

3111. Before the creation of a separate office and a separate staff for the taxation of costs, were the costs formerly taxed in the Masters' offices?—They were.

3112. Did Master Henn, in addition to all his other business, tax his costs?—He did.

3113. Did you assist in that operation sometimes?—Occasionally.

3114. Was that business done by him, satisfactorily done to the suitors?—Very satisfactorily to the solicitors and the suitors.

3115. Had he any great arrear?—None.

3116. Besides undertaking all the other business of the office?—Yes, but it was becoming very irksome to him.

3117. Was he in the habit of taking home papers to read at night?—Yes, and the Masters do so still.

3118. And they bring them back in the morning, done?—Yes.

3119. And I believe those gentlemen have never confined themselves in their attendance to the statutable laws?—Never.

3120. If necessary, they sit after their hours?—Yes.

3121. *Chairman.*] There was no arrear then of taxed costs in the Master's office?—Nothing that there was any complaint about or created any inconvenience.

3122. A new office, with a large staff and large salaries, has been created for taxing costs?—It was, in the year 1846.

3123. Of course there is no arrear in that office?—The profession generally complain that there is a great arrear in it.

3124. Mr. *Deasy.*] You stated that the present Chancellor appointed his son to

to be his secretary, was not a similar cause adopted by his two predecessors?—I think it was.

3125. Mr. *Grogan.*] Previously to the Bill of the Attorney-general, was any compensation provided for yourself?—There is a provision that I may make a claim for compensation, but none is provided.

3126. You are not now strictly, by law, entitled to compensation?—Yes, under the Act of 1850, I am.

3127. Does the Bill of the Attorney-general, now before The House, make any alteration in your position in that respect?—It refers me to the Lords of the Treasury.

3128. You had the power of making that claim previously?—According to the Act of 1850, I am entitled to get compensation according to a scale referred to in that Bill, but if my office is abolished, I should come in under the Bill now before The House about superannuation pensions; and what I am now entitled to by law would be considerably reduced; I should lose 30 *l.* or 40 *l.* a year in my compensation.

3129. You have subordinate officers under you in the Master's Office, have not you?—There is a scrivenery clerk.

3130. What is his employment?—To copy documents of great importance, deeds, and original documents.

3131. Is his office strictly confidential; has he confidential duties to discharge?—Yes, so far as the custody of documents of great value is concerned.

3132. Has he any permanency of tenure in his office?—None, except having held it for a long time; the head of the office might put him out.

3133. What is the gentleman's name in your office?—He is a son of mine.

3134. How long has he held that situation?—Seven or eight years; and there are others that have held a great deal longer; there is a clerk in Master Murphy's office, who, I think, has been 20 years in it.

3135. Is the tenure of office of the same nature?—Yes.

3136. Is any provision made for them in the event of their offices being abolished, as proposed by the Attorney-general's Bill?—No.

3137. Are they at this moment entitled to any claim for compensation in the event of their services being discontinued?—No; when the Six Clerks' Offices were abolished, the clerks employed there under similar circumstances all obtained compensation.

3138. Was the situation of the clerks in the Six Clerks' Offices in point of tenure and duty analogous to those in the present Masters' Offices?—A great many of them were.

3139. Was there any superiority in the nature of the trust with regard to the duties performed by the six clerks, compared with your office?—No.

3140. As far as may be they were analogous?—Yes; there were some in the Six Clerks' Offices in higher grades, but there were several in the same grade as the writing clerks in the Masters' Offices, and a great many were not officers of so confidential a nature as those in our office, and yet they obtained compensation.

3141. Mr. *Whiteside.*] You know the distinction between patent offices and offices not held by patent?—I do.

3142. If the Masters are abolished, they must get their full salary for life?—They must; and it is so provided by the Bill.

3143. You, not holding a patent office, in case your office is abolished, must make what case you can to the Treasury?—Yes.

Jovis, 8° *die Maii*, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Mr. Whiteside.
Sir Erskine Perry.	Mr. Deasy.
Sir James Graham.	Mr. Edward Ellice.
Mr. Fitzgerald.	

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

Mr. *Richard King*, called in; and further Examined.

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3144. Mr. *Whiteside.*] I UNDERSTAND that you wish to make a short statement to the Committee upon something said in reference to the Costs Department of the Court of Chancery?—Having heard, in the course of this investigation, many statements made about the arrear in the offices of the Taxing Masters of the Court of Chancery, tending to great delay of business, and consequent loss and injury to the suitors of the court, those statements being unaccompanied by any notice of the many circumstances which, I think, if they have not altogether caused, have contributed very much to such arrear; and as I think such statements tend to reflect rather injuriously upon the Taxing Masters, and as I am aware of the circumstances, and feel that the Committee are anxious to obtain all the information possible, I beg respectfully to state matters within my own knowledge upon that subject. The Act creating the office of Taxing Master was passed in the year 1846, and came into operation in November of that year; and I may here state that the Court of Chancery, whether regarded with reference to the importance and variety of its jurisdiction, and great extent of its powers, or in reference to the enormous amount of property with which it annually deals, is of an importance far exceeding that of any other court in the kingdom. But, in the spirit of parsimonious economy, as I may call it, which has, with a few exceptions, prevailed ever since I had any acquaintance with it, there was only one Taxing Master, with a chief clerk and an assistant, appointed when the office was first constituted. The result has proved how utterly insufficient that establishment was, to the duties to be performed. A barrister of long standing was the first Taxing Master appointed; and, by the Act, all the costs in the Master's Offices, taxed, untaxed, and partly taxed, were directed to be handed over to him by a given day. At the time of his appointment, although there was no arrear in any of the Masters' Offices sufficient to create any inconvenience, the aggregate of the costs, untaxed and partly taxed, in the Masters' Offices, formed a formidable array of business on the formation of a new office, a knowledge of the duties of which had to be acquired by the appointee. I may here refer to the very injurious effect produced in this instance by transferring a large arrear of business to a newly created office at its start. When the Taxing Master was first appointed, although he might, from his standing at the Bar, have been acquainted with the legal principles of taxation, he could not, by any possibility, as a barrister, have been acquainted with the minute principles of taxation, and the details of business which would enable him to tax costs, and he had to apply himself most indefatigably to acquire a knowledge of his new duties. In order to tax a bill of costs, I may inform the Committee it is requisite to possess a minute and thorough knowledge of the details of business, not only in the offices of the Court of Chancery, but also in the other offices where searches are usually made, in order to clear title, such, for instance as the law courts, the Judgment office, the Auditor-general's, the Prerogative and Consistorial Offices, Quit Rent Office, &c., and all this knowledge it was necessary for any person appointed to the office to acquire before he could proceed effectually to discharge his duties, and he had, consequently, to proceed cautiously; and having commenced with the arrear I have alluded to, it should not create surprise that arrears continued to accumulate. I may refer to the account that the Taxing Masters give of themselves, in the report of the Incumbered Estates Commission; from which it appears the creation of the Incumbered Estates Court in 1849, and the abolition of the equity jurisdiction of the Court of Exchequer in 1850, threw at once into the office an amount of costs for taxation, which

which, in the ordinary course of business would not have been taxable for several years afterwards. I find by the Tables to that report that the amount of costs taxed for four years, 1851, 1852, 1853, and 1854, in the Court of Chancery, is 738,501 *l.*; I find that in the year 1851 alone, there were costs lodged for taxation, amounting to 246,314 *l.*, which is within a few thousand pounds of the whole amount taxed in the Incumbered Estates Court from the commencement; and the Taxing Masters, in their memorandum, admit that there is something like 86,716 *l.* arrears of costs remaining. But it appears also, from their memorandum, it is not an actual arrear, for the reasons stated. It appears that a great deal of those costs, after they had been lodged, must have been compromised and otherwise settled, so that, though they are remaining as apparent arrears, they are not actual arrears. I find that the Incumbered Estates Court, which has now been in operation, or, at least, at the time of this report was in existence, something about five or six years, taxed, up to the time of making the report, 254,607 *l.*, which would give an average of about 51,000 *l.* per annum.

3145. *Chairman.*] You are now, I understand, only contrasting the two tables already before the Committee, in the appendix to the report?—Yes, referring to a calculation I have made as to the amount of costs individually taxed; by that calculation, it appears that the costs annually taxed by the officer in the Incumbered Estates Court, who has been very often spoken of as an efficient officer (I am sure very properly), were something over 51,000 *l.*; I find that by making a calculation upon the amount taxed here by the Chancery officers, that each of them had taxed individually upwards of 60,000 *l.* of costs in the year, so that when you contrast this with the amount taxed in the Incumbered Estates Court, I think it shows they do not stand, or should not stand in so bad a position with regard to the public as I think the impression in the minds of the Committee is that they do.

3146. Mr. *Whiteside.*] Have you to state anything more about costs?—No; I would take the liberty of saying that I have heard a great many comparisons instituted between the Incumbered Estates Court and the Court of Chancery, and I would beg leave to say they are not at all parallel cases; in the Court of Chancery they have a great variety of jurisdictions, and a great variety of powers; it is an old court, where you can search in some of the offices for probably 200 or 300 years; there are certain orders of the court extant as early as 1639, and I believe you can search a great many years further back in the Rolls Office. The Incumbered Estates Court is an office newly created; it is only seven years old, and it is quite unreasonable to contrast the facility for searching for documents in that court with the Court of Chancery, for if you can get a search from one day to another in the Incumbered Estates Court, and if you are kept three or four days in the hurry of business for a search in the Court of Chancery, it cannot be considered unreasonable.

3147. In the Incumbered Estates Court we understand that the costs are confined to one object, that is, to the sale of land?—Certainly.

3148. But in the Court of Chancery there are costs established by all the various subjects of litigation in the court?—Every possible subject of litigation, and a great amount of what is technically called miscellaneous business, between solicitors and clients, not connected with any proceedings at all.

3149. Therefore those costs require more care and general knowledge of business to enable the Masters to tax them?—Of course they are more complicated.

3150. Is that all that you wish to say about costs?—Yes.

3151. Did you observe in Mr. Attorney-general's Bill that there is a clause taken from the English Act for the chief clerk reporting by a certificate?—I did.

3152. Have you observed in this Procedure Bill, which has my name to it, that that clause is omitted. From your experience of the Master's office, is the system of reporting by the chief clerk, or the Master, to the Lord Chancellor, one of the greatest evils of the court?—I think it is one of the great evils of the court.

3153. Sir *E. Perry.*] That is the general system of reporting?—Yes, the general system of reporting.

3154. Mr. *Whiteside.*] From your observation and 40 years' experience, what is your judgment upon the policy or impolicy of requiring the chief clerk to make reports in the shape of certificates?—I apprehend that it would in the course of a few years be a repetition of the present practice of the Masters in the court upon a small scale, by persons not so well qualified.

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3155. Is it your opinion, in any form that the Committee might adopt, that as much of the work of the court as possible should be done by the judicial authorities of the court?—I think I have expressed an opinion already that I would not consider it at all judicious to divide the judicial duties and responsibility of the Judge with that of a subordinate officer.

3156. You would let the subordinate officer deal with matters of detail, but not matters of law or of fact?—Just so. It might have two effects; one effect would be, that possibly the Judge, in an ordinary case, might be shifting his business upon his deputy; and another effect would be, that where a clerk was to exercise any judicial authority, the parties would never be satisfied with his decision, and would appeal against it.

3157. Sir *E. Perry.*] Even though he were a better Judge than the Judge himself?—It would lead to what very often occurs at present, namely, a double hearing of the same case.

2158. Mr. *Whiteside.*] If a question of disputed fact, under Mr. Attorney-general's Bill, or under my Bill, came before the chief clerk, what would you suggest would be the course that should be adopted?—I think the Bill goes to this length; if it is a question of law, or of fact of small importance, he can communicate personally with the Judge, and if it is of sufficient importance to require it, he can set the case down in the Judge's list for argument, and let him decide it.

3159. *Chairman.*] Will you be good enough to state for the information of the Committee what the course of procedure before the chief clerk is, that is pointed out by the Bill of the Attorney-general, as it is called?—The course of procedure before the chief clerk, pointed out by that Bill, will, I think, depend upon the general orders that are to be made, but it specifies, in one instance, that he is to certify the result of his proceedings to the Judge in the shape of a certificate, and that is what I apprehend may grow into a report.

3160. Is not this the course, that it prohibits a report by the chief clerk, but enables the chief clerk to certify to the Judge what has been done?—I do not think there are any words prohibiting a report.

3161. Does not the Bill provide that, in place of a report, there should be a certificate?—It is only another name for the same thing; all the Masters' reports are certificates; they always conclude with the words, "I certify."

3162. The Master's report recites all the proceedings that have taken place, and the Bill proposes to have a certificate, stating shortly the result of the proceedings, and that certificate, when adopted by the Judge, becomes his certificate, and he makes his order upon it?—From the nature of a document of that kind, unless the chief clerk's certificate is sufficiently explanatory to enable the Judge to form an opinion upon the matter, he cannot adopt it. Any document framed for the purpose of conveying information to another person, who is to form an opinion upon it, would require, from its nature, to be longer than an order or a document proceeding directly from a person who had the power to adjudicate.

3163. You are not aware that, under this Bill, if the parties contravene the decision of the chief clerk on any administrative matter that comes before him, they have a right to go before the Judge, and have his determination, in place of the chief clerk?—Practically, I am of opinion that the parties will not be in a position to controvert it, until the chief clerk makes his certificate; then they will go before the Judge, and it will be just a re-hearing of the case, and a repetition of the evils of the present Master system.

3164. Do you mean that it would be a repetition of the Master system at present, which is, that a case goes before the court on the Master's report; there is a solemn hearing upon it, and perhaps the case is again sent back to the Master; whereas the English practice is, the chief clerk having heard the case, if the parties dispute the decision of the chief clerk, they can go in before the Judge and have a hearing in chambers; would that be adopting the Master system?—I do not mean to say that it would be adopting it immediately; but I say it is a system that would very likely increase and grow into it.

3165. What duties would you assign to the chief clerk?—I would assign to him nothing but administrative duties; I would allow him to sign all formal documents, and to take accounts.

3166. Supposing the parties contravened his decision upon an item of account, how would it be brought before the Vice-Chancellor?—If it is a matter not of much importance, they should have an opportunity of communicating verbally with

with the Vice-Chancellor. If it is a matter of sufficient importance to require it, they can put it down in the list for hearing, if the parties wish to argue it before the Vice-Chancellor.

3167. Would not that be precisely the evil that would grow out of the procedure contemplated by this Bill, that there would be a rehearing upon that item?—There certainly would be a rehearing; it would be so far a rehearing, but there would not be the expense of making up the report or a certificate preparatory.

3168. Are you aware that according to the practice here contemplated, there would be really no expense upon that certificate; it would be a certificate that the clerk certified such to be the result. Are you familiar with the new receiver rules in the Court of Chancery in Ireland, regulating the proceedings in the office of the Receiver Master?—I am.

3169. The rules to which I allude are the new receiver rules in the office of the Receiver Master?—I am not aware of any rules made by the Receiver Master, but I am aware of some new rules made in Chancery about 1851 upon which the Receiver Master acts.

3170. Are you aware under what Act those rules have been made?—I am not; because the Lord Chancellor has very extensive powers, contained in a variety of Acts, to make rules.

3171. Under one Act especially, are you aware that he has most extensive powers to regulate the conduct, the appointment, and everything connected with the office of receiver?—Sir John Romilly's Act of 1850 gives him power, but I do not think those rules specify that they were made under that Act, so that you could assign them to any one of the Acts, giving the Lord Chancellor power to make rules; it is very likely they were under Sir John Romilly's Act, because they were made since it passed.

3172. They could not have been made under it, because in consequence of disagreement between the Judges, it was necessary to get a second act, was not it?—That was rectified afterwards by the second Act.

3173. A question was put to you in your previous examination, in reference to the provisions in Mr. Whiteside's Receiver Bill, prohibiting the appointment of solicitors and barristers to the office of receiver, and you approved of that as a wise legislative provision, to a great extent?—I am aware that there is a rule of the court against it. I was asked my opinion the other day with respect to that prohibition.

3174. You are aware that it is not a new prohibition, but that it exists already under a rule of the Court of Chancery?—I am.

3175. Is that the established practice in the office of the Receiver Master?—Yes, and I believe in the office of the other Masters also.

3176. Are you aware also that under the existing rules of the Court of Chancery, the Receiver Master does not and need not appoint the receiver proposed by the parties, but that it is his duty to select the best receiver he can find, and one who is perfectly independent?—Yes, and the rule goes farther than that; the Master may advertise for a receiver, if he thinks fit.

3177. Mr. *Whiteside.*] Are you aware that solicitors are at this moment receivers over many estates?—They may be, but they are old appointments.

3178. Sir *E. Perry.*] They were appointments prior to the new rule?—Yes.

3179. *Chairman.*] Does not the practice go still further to exclude from the office of receiver not only solicitors and barristers, but clerks in the offices of solicitors?—I think it does.

3180. Therefore the solicitors who are now acting as receivers are old appointments?—They are.

3181. Mr. *Ellice.*] Have any receivers been removed on account of their being solicitors since the new rule?—I am not aware of any.

3182. *Chairman.*] Are you aware also that according to the frequent practice of the Court of Chancery, the Receiver Master may appoint what are called district receivers?—I am.

3183. That is, he may if he thinks it will subserve the ends of justice, appoint a receiver for a particular county or district?—I am not aware of that; I do not think the rules goes to that extent, but the rule, as I understand it, is that where a receiver is to be appointed in a neighbourhood where there is a receiver existing, he may appoint that receiver so as to form districts by groups.

3184. In that way he may bring in a large portion of a county, or portions of

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two counties under one receiver?—It is a much more practicable way than dividing a county; you might have a district without any receiver in it.

3185. Are you also aware at present the Receiver Master has very extensive powers with reference to the managing and letting of estates, the abatements of the tenants' rents, and the application of wages for the necessary expenditure?—I do not know that he has; in minor and lunatic matters the Masters exercise a larger discretion than they do in cases of creditors' suits.

3186. In reference to that, you know of course that at present he has original power to interfere on application, and has liberty to make abatements of rents to the tenants?—I am aware that there is a rule to that effect, but I do not think he does make abatements to tenants, unless with the consent of the inheritor or the person owning the estate; I think the rule, as far as my knowledge goes, is not applied so fully and extensively as it would read.

3187. Your statement is that the rule is not applied by the Master so extensively as it might be?—Not as it would purport to read.

3188. The words of the rule are, "The Master shall have jurisdiction and authority to hear, determine, and make orders upon the following matters;" amongst the rest, "upon application for liberty to make abatements of rent to tenants by tenants for such abatements." The language of the rule would appear very large supposing the Master only administered it; is not that so?—Yes.

3189. Your objection is not that legislative interference is necessary, that rule being made under the statute, but that the Judges to whom it is entrusted do not duly expound and administer the rule?—I do not think they go to that extent, but I think they are under the impression, unless the inheritor consents, they have no right to make abatements to tenants to any extent.

3190. And accordingly they act on that impression, that without the consent of the inheritor they are not at liberty to make abatements?—I think that is the impression, as far as I understand; I may be wrong in that.

3191. Mr. *Fitzgerald.*] In reference to the rule which you said existed, that attornies and solicitors should not be appointed receivers, is it not the fact, that where an attorney has been a receiver, having been appointed prior to 1850, that he has under the new rule, authorising the Master to appoint district receivers, been appointed receiver over estates in the immediate neighbourhood?—I cannot answer that question, because since that rule for the appointment of district receivers was made, the appointments have been all in Master Lyle, the Receiver Master's Office; they do not come under my observation.

3192. *Chairman.*] As I understand you, stated in your previous examination that you thought it would be beneficial that the receiver practice in Ireland should be assimilated to the practice in this country, and that the Bill of the Honourable and Learned Member for Enniskillen had the effect of assimilating the practice of the two countries?—I thought I stated that I did not feel myself at liberty to answer that question, because I found Sir Edward Sugden had given an opinion one way, and the Master of the Rolls had given an opinion the other way. I thought it would have been great presumption in me to offer an opinion at all upon the subject.

3193. I am anxious to get a little information upon the subject of the appointment of receivers for this country; are you acquainted with the practice which regulates the appointment of receivers in this country?—Not generally, but I know to this extent, that in mortgage cases, the mortgagee is allowed, instead of getting a receiver, to go into possession himself. I am aware of it to that extent, and only to that extent could I have spoken.

3194. I believe a mortgagee, in Ireland, can go into possession also, if he pleases?—I believe that is the law; but I also believe that it is not acted upon. I never knew an instance.

3195. Is not that because the mortgagee, in Ireland, has the greater facility of entering into possession by a receiver?—I am aware that the law is so.

3196. Is that the only distinction between the law of the two countries that you are able to point out?—The only one.

3197. Are you at all acquainted with the procedure of the Court of Chancery in England regulating the appointment and duties of receivers?—No, I am not.

3198. Are you acquainted, practically, with the procedure and practice of the court for the sale of incumbered estates in Ireland?—I know something of it; I cannot say that I know it minutely; but I know it to this extent, that I have had property of my own sold in it; and when I say that, I beg to state also that

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it was not for any debt contracted by myself. That property was devised to me incumbered, and was subsequently sold for the incumbrances.

3199. Is your knowledge of the procedure, the practice, and business of the Incumbered Estates Court, derived solely from that circumstance?—I know in other ways the proceedings of that court; it is partly from that, partly from reputation, and partly from inquiring on that occasion into the different modes of proceeding.

3200. You are in Master Henn's Office?—Yes.

3201. Can you tell me the number of sales which were actually carried out in that office in the year 1855?—I think I have a memorandum that will tell the amount of the purchase money for three years ending 1855, but I cannot tell the number of sales; 38,000*l.* was the amount produced by the sales in Master Henn's Office for three years ending 1855, and I think the amount in Master Murphy's Office was 35,000*l.*

3202. Mr. *Whiteside.*] I believe the office of remembrancer and the equity jurisdiction of the Exchequer was abolished in 1850, was not it?—The equity jurisdiction of the Court of Exchequer was abolished in 1850.

3203. And the costs, of course, which were incident to the suits that existed in the Court of Exchequer, were transferred to the costs department of the Court of Chancery?—They were.

3204. *Chairman.*] Were the sales to which you have referred, sales which could or could not have taken place in the Incumbered Estates Court?—I think on looking at the relative value of the sum they produced, they were sales either of bishops' leases or short terms; they were certainly not fee-simple estates.

3205. Which the Incumbered Estates Court could not sell?—No.

3206. Mr. *Whiteside.*] Did you get purchasers for those interests?—Yes.

3207. At fair prices?—Yes.

The *Chairman* stated that he had received a letter from Mr. Starkey, the Accountant-general of the Court of Chancery, which he wished to lay before the Committee.

[*The same was read, as follows:*]

Accountant-General's Office, Court of Chancery, Dublin, 6 May 1856. Dear sir,—Will you be kind enough, in case the Committee, of which you are Chairman, do not think proper to summon me to London for examination, to read such portions of this letter as you may judge necessary for their information. I am informed that it has been asserted by a very respectable and well-informed professional gentleman who has been examined before them, that our practice presents a marked contrast to that of the corresponding office in the Incumbered Estates Court, in the very great delay of obtaining payments of money out of court, caused by the prolixity and complexity of the machinery employed, and in the expense incident to obtaining them. The best reply is, to state shortly what our practice is: when the copy of the order of the court for a cash payment is brought to us, it is read, and on our referring to our books and ascertaining that the sum specified stands to the credit of the cause or matter, the draft is drawn, and held ready to be handed to the party with the order, to be countersigned by the registrar; as soon as this is done, the party brings back the draft and order, signs a receipt for the former in a book kept for the purpose, and is handed his draft, to be cashed at the Bank of Ireland. Neither on this or on any other business in the office is there any charge, a small fee on copies of accounts excepted. In the registrar's office, indeed, a fee of 6*s.* 2*d.* is charged on each draft, and cash payments are generally subject to a poundage to the usher, which is deducted at the Bank; but no money, the produce of sales, is liable to this charge, so that in the branch of our business corresponding to that in the Incumbered Estates Court, no deduction whatever is made in our office. Practically, when the state of business in the office allows of it, a party who bespeaks his draft one day obtains it the next, a day being found necessary, as a general rule, to secure accuracy. But at certain periods of the year, at two especially, when the dividends on New 3 per cent. Stock (in which nearly the entire of the Chancery funds is invested) are to be paid, under what are called continuing orders or otherwise, the simultaneous demand is so great, that considerable delay does, in point of fact, occur; a delay naturally and necessarily caused by the number of drafts to be prepared and the few hands to prepare them. There are nearly a thousand of these drafts, and only three clerks out of the seven in my office can be spared to get them ready. It is very common at such periods for a fortnight or even more to elapse between the demand for a draft and its being procurable. This is much to be regretted, but it is inevitable, as the return of interest from the Bank must form the groundwork on which we have to act; and this return cannot be had in time for us to post our books before the day of payment. Under these circumstances I have, latterly, with a view to the accommodation of the public, sanctioned the unbusinesslike practice of drawing a portion of the draft before the return comes in, and

Mr. *R. King.*

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consequently before posting our books. I ought to state, in justice to my clerks, who are known to be most laborious, painstaking, and intelligent men, that at such periods they often volunteer to work out of hours without remuneration, for the convenience of the public. Now the Committee will please to remark, and this it is which I wish to press upon their notice, that the instance adduced by the gentleman in question in proof of the complication and prolixity of our practice, is one which has no parallel in the Incumbered Estates Court; a comparatively small portion of the funds in that court being invested in Stock, there can be no periodical press for dividends; but it is only in the case of dividends that delay is complained of. Court orders brought to us, even while the dividends are paying, are attended to, and acted on after a day or two at farthest. And this brings me to the Incumbered Estates Court; the business of that court, as regards the number of drafts to be prepared, is trifling in comparison with ours. I need not say how much larger the money business of the Court of Chancery must necessarily be in all the other departments, in some of which they have no corresponding functions; it is well known to all who have to do with the offices. But the Committee ought to be informed, that the practice in the accountant's office of the Incumbered Estates Court was originally grounded on our own; the Chief Commissioner sent his first accountant to me, with a request that I would furnish him with our forms, &c., and instruct him in the details of our proceedings, which I did; and these forms have been, I believe, the groundwork of the practice of his office ever since; but there are some differences; in that court the cheques are prepared in the secretary's office, entered, &c. in the accountant's office, and signed by the Commissioners themselves, in whose names the funds of the court stand in the Bank of Ireland; whereas the preparation, entering, and signing, all take place under my own eye, and the funds are paid on my order. I would request of you to read to the Committee, in substantiation of these statements of mine, the answers of Thomson Teed, Esq., the very efficient accountant of the Incumbered Estates Court, to the Commissioners of Inquiry last year, at page 11 of their report; and that portion of the answers of James Macdonnell, Esq., at page 14, contained between the lines 14 and 7 from the bottom of the page. I hope I have now shown that we use the simplest and cheapest machinery possible, and that, whatever it be, it is, in most of its details, identical with that in the Incumbered Estates Court. Any inconvenience the public occasionally suffers from in this department of Chancery could not affect those who, under a new law, would have payments made to them in matters connected with the sale of lands, through this office, provided the two branches of business were kept distinct, as they should be, with an adequate staff for each. I beg to remain, &c., *Digby P. Starkey*, Accountant-General.—To the Right Honourable the Attorney-General for Ireland.

Memorandum.—Our cash accounts are nearly 3,000; in the Incumbered Estates Court they are about 250. They have a staff of four, I believe; we, of seven.

Acheson Lyle, Esq., called in; and Examined.

A. Lyle, Esq.

3208-9. *Chairman.*] YOU are at present one of the Masters of the Court of Chancery in Ireland?—I am.

3210. I believe before you were transferred to the Court of Chancery you filled the offices respectively of second remembrancer, and afterwards of Chief remembrancer, of the Court of Exchequer?—I did.

3211. At what time did you become the Second remembrancer of the Court of Exchequer?—I was appointed in November 1835.

3212. Upon the resignation of Mr. Anthony Richard Blake, of the office of Chief remembrancer, you succeeded him?—Yes.

3213. Up to what time did you continue to be Chief remembrancer?—I succeeded Mr. Blake in 1835, and I continued Chief remembrancer of the Exchequer until the equity jurisdiction of the Court of Exchequer was abolished; when I, with all my business, was transferred to the Court of Chancery as a Master in ordinary.

3214. Since then you have been acting as a Master of the Court of Chancery down to the present time?—Yes.

3215. The Court of Exchequer exercised an equity jurisdiction co-ordinate pretty nearly with the Court of Chancery, did it not?—It did.

3216. Whilst you were Second remembrancer, you performed towards the Court of Exchequer similar duties to those of a Master in the Court of Chancery?—Precisely the same duties.

3217. The Chief remembrancer did not perform many of the administrative duties of the court?—From the time of my appointment he ceased almost altogether, except in very rare instances to the contrary, to exercise any duties that were analogous, similar to those of a Master.

3218. So that whilst you continued in the office of Second remembrancer of the Court of Exchequer, you acted, I may say, as a Master of that court, performing

forming all the duties that a Master of the Court of Chancery performed?—I did.

3219. When you became chief remembrancer, you also continued to perform the same duties, not having the advantage of a second remembrancer?—I did.

3220. In the Court of Exchequer, I believe, you, as second remembrancer and as chief remembrancer, had very large experience in reference to the appointment of receivers?—I had. The Court of Exchequer, when I was appointed, did nearly, I think, as much business as the Court of Chancery in equity.

3221. In addition to its own peculiar business, it did nearly as much as the Court of Chancery in equity business?—Yes.

3222. I believe it was rather a favourite court in which to obtain judgments, and in which to obtain the appointment of receivers?—It was very much the case, as you have stated.

3223. You, therefore, acquired in the Court of Exchequer, in addition to your experience in the Court of Chancery, familiarity with both the law and the practice with respect to the appointment of receivers in Ireland?—I did; but I should say that from the time I was made chief remembrancer and the second remembrancer was appointed, the duties in respect to receivers were transferred to the second remembrancer in the arrangement of business between us, so that from 1843 down to the abolition of the court, I was not the person who managed estates under the court.

3224. After the passing of Sir John Romilly's Act, called the Chancery Regulation Act, there being, under a particular section of that Act, very large powers given to the Lord Chancellor; I allude to the 31st section of the Act, by which it is provided that the Lord Chancellor of Ireland, with the assistance of the Master of the Rolls, can make General Orders for certain purposes, and amongst others, "particularly for regulating the appointment of receivers, and the powers and duties of such receivers, and the allowances to be made to them, for the purpose of insuring the better and more efficient management of the estates under the control of the Court of Chancery in Ireland." You are aware that, under that section, the Lord Chancellor did make certain rules to regulate the duties and appointment of receivers?—He did.

3225. And since 1851 I believe one of those rules was, that you were to act as Receiver-master?—It was one of those rules; he constituted the office of Receiver-master, and he provided that references to appoint receivers should be made to one of the Masters; and he applied to me to take that duty. I assented, as a matter of course, he intimating to me at the same time that he had the power of altering that arrangement, and that he would feel himself at liberty to do so, if I at any time desired it.

3226. So that you should not be confined to that particular office?—Yes, I spoke to him particularly with that view.

3227. Since your appointment as Receiver-master, which I believe took place in 1851, you have had the appointment of all new receivers, and the regulation of their duties; taking their accounts, &c. has been in your department, and under your immediate control?—Yes.

3228. Armed with the extensive powers that the new rules give you?—I have, as to all receivers appointed since that time, and all receivers that were in my own office before that time.

3229. Have you, amongst other powers, ample power given to you in reference to the selection of receivers?—I have.

3230. You are not confined to the receivers suggested by the parties, but you may look around you and if necessary advertise, to enable you to select the best person to be appointed the receiver in any given case?—I do not conceive that I am in any way controlled in my selection, except by the rule to which I am directed to have regard.

3231. You have also, under the 33d rule, most extensive powers given you of appointing what are known as district receivers?—I have.

3232. Will you explain to the Committee what is meant by the appointment of district receivers?—The words of the rule are pretty nearly, that in the selection of receivers I should have regard to any existing appointment of receiver in the same locality, taking into consideration his merits, with the view of consolidating the receivers and making something in the nature of a district receiver.

3233. You are also bound by the rule, I believe, not to appoint a practising

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barrister or solicitor to the office of receiver?—I am, unless there be an order made enabling me to do so.

3234. I believe it is also part of the practice connected with the appointment of receivers, that you shall not appoint any one holding the position of clerk in the office of any attorney or solicitor?—That has been the practice under the rule of Lord St. Leonards.

3235. Is that rigidly adhered to?—It is rigidly adhered to.

3236. Are you enabled to give to the Committee in figures, the number of new receivers that have been appointed in your office in the several years of 1852, 1853, 1854, and up to December 1855?—I can. The entire number of receivers appointed by me since October 1851 is 742.

3237. Up to what time do you bring that?—Up to the present time.

3238. Can you state whether in all those instances the receivers completed their appointments by entering into their recognizances?—They all did.

3239. Can you give the number appointed in the year 1852?—The number of receivers appointed by me in each year, from the 20th of October 1851, being the date of my appointment to the office of Receiver-master, to the 1st of May 1856, is as follows. From the 20th of October to the 31st of December 1851, I appointed 18; in the entire year 1852, I appointed 215; in 1853, I appointed 173; in 1854, I appointed 149; in 1855, I appointed 122; and from the 1st of January to the 30th of April 1856, I appointed 37; making 714 in all. The date of my being appointed Receiver-master was the 20th of October 1851; the Lord Chancellor intimated to me in August, that I was to fill that office; he desired me to commence when my office opened again in October, and I began then to execute the duties of Receiver-master, and I have given the numbers from that time; the number I before gave was 742; of course the difference arises from those I appointed previous to that time.

3240. Are you in a position to give in each of those years the number of receivers that were appointed in either minor or lunatic matters?—I am not. The number of receivers on my books at present is 939; of those, 55 are in minor matters, and one only in a lunatic matter; 314 are receivers that have been appointed in matters under what is called the 15th section of Sir John Romilly's Act.

3241. Mr. *Ellice.*] Are you speaking of receivers over land?—I am speaking only of receivers over land. Under the rule of the Lord Chancellor, which made me what is called Receiver-master, I considered and the Masters conferred upon it, and they agreed with me that the rule had only reference to receivers over land; that receivers over personal estate did not come within the spirit of the rule, and it has been acted on so.

3242. *Chairman.*] You are giving now an account of the receivers in your own office, independently of the receivers existing in the other Masters' offices?—Entirely; those are all in my own office.

3243. They are new appointments since 1851?—Entirely; of course since 1851 they are all my appointments, because the other Masters do not appoint receivers at all.

3244. In fact, if in the other Masters' offices, by an application to the Master of the Rolls, any other Master, acting under the 15th section, makes an order to appoint a receiver, that order at once goes to your office to be acted upon?—Yes.

3245. Since 1851 has not every new appointment taken place in your office?—It has. With one qualification, which perhaps you will allow me now to state, that if a receiver had to be appointed since 1851 in place of a receiver who had been appointed in another office over any estate, the appointment of that receiver to be substituted for another goes to the Master in whose office the appointment was originally made.

3246. The business of that receiver existing in that office?—Yes, the Master having audited his accounts and known everything about the estate, it was arranged that the substitution of one receiver for another should be by the Master who originally appointed the receiver.

3247. Are you in a position to give the number of old receiverships still existing in the other Masters' offices?—I am, as to Master Henn's Office, I think, but not as to any others.

3248. Will you state, according to your inquiry, the statistics of receiverships in Master Henn's Office?—I find that the paper which was returned to me by Mr. Stanford, who is Master Henn's examiner, is the number of receivers'

receivers' accounts lodged, the number passed, and how many of them were final accounts.

3249. Are you in a position to inform the Committee now in respect of what particular claims those receivers have been appointed in your office?—I am not at present, because there was not time to make out that return before I left Dublin.

3250. Can you give, with respect to Master Henn's Office, the number of accounts passed and the number of final accounts?—In Master Henn's Office the number of receiver's accounts lodged in the year 1853 was 363, and of those he passed 337, and of those that were so passed eight were final accounts. In 1854 the number of receivers' accounts that were lodged in Master Henn's Office were 305; the number passed were 282, and the number of those that were final accounts were 28. In the year 1855 the number of receivers' accounts which were lodged in Master Henn's Office were 258; the number passed were 233, and of those 22 were final accounts.

3251. By final accounts, I believe you mean an account with respect to which the receiver has completed his duty, and is about to be discharged as receiver?—Yes.

3252. Those final accounts would, in fact, represent cases in which the receiver had ceased to account?—They would so far as that was the reason of the discharge of the receiver; there may have been receivers discharged from other causes; for instance, the compromise of a suit, or the parties having settled, or something of that kind; some receiverships may have terminated from those causes, as well as from the estates having been sold, or the objects of the suit worked out.

3253. In the administration of that branch of the practice of the Court of Chancery in Ireland that relates to receivers under the new rules, are you in a position to state to the Committee whether the defects and abuses which existed previously to 1851 have been to any, and what, extent corrected?—They have been very much corrected.

3254. Will you state, for the information of the Committee, the particulars in which pre-existing abuses have been checked, or entirely corrected?—I think there is no part of the administration of estates under receivers that has not been corrected; I think the receivers are very much better; I think the costs and expenses are very much less; I think the loss of rents by the estate has been very much diminished; I think the injustice and cruelty to tenants have been very much reduced, and I think the money brought in and realised for the suitors has been very much increased.

3255. Was not it one of the evils that existed under the old practice, that when an order was made for the appointment of a receiver, the parties who obtained the order had the nomination of the receiver?—Uniformly; sometimes there was a contest. I mean to say, as a general rule, that the solicitor for the plaintiff, or his client, selected and nominated any person he pleased.

3256. Did it not often happen that there were arrangements between the parties nominating the receiver and the receiver himself, in reference to his own emoluments in regard to his appointment as receiver?—I have always heard so; but I cannot say (though I believe it to be the fact) that I can put my finger upon any case and say, I know it.

3257. Is it not understood that, in many instances before the new practice, the solicitor having the carriage of the cause nominated a party to be the receiver, who was little better than the agent of the solicitor?—I consider in very many cases the receiver was a mere stalking-horse, and that the solicitor was the person who managed the estate, and did everything.

3258. So that in such an instance you had a person managing the estate perhaps, whose interests and duties were in direct conflict?—So far as his interest was to increase his own emoluments, it was directly contrary, of course, both to the interests of the suitors and the owner.

3259. His duty would be to make the estate productive, but his interest would be to make as much as he could out of the estate, in the shape of personal expenses?—No doubt.

3260. Whereas now the parties have no right to nominate a receiver, but you select whoever you think to be the best person?—Always.

3261. In your selection, if you find a case of magnitude and difficulty, you may take measures to inquire who would be the best receiver, or you may select a good man already acting in the neighbourhood, and add the new estate to his charge?—I always do; I never appoint any person without making inquiry and

endeavouring, so far as I can, to know something about him; to know whether he is a fit person to be appointed, or if he has been a receiver before, how he has conducted himself in the management of that receivership.

3262. If you were about to appoint a receiver over estate A., and you found a neighbouring estate B. under the charge of an agent who had shown himself to be an agent of skill, and one entitled to confidence, would you select such a person as that and appoint him receiver?—I would. For the purpose of ascertaining those facts, I require that his accounts previously passed, either in my own office or any other Master's office, shall be produced before me; I examine them and see what rents he has brought in, how much has been lost, and what have been the observations upon his conduct in respect to the management of the estate by the Master before whom he has accounted; and if I find that he has failed in any of those respects I do not appoint him.

3263. In addition to the means which you take to obtain the best receiver, are you always guided by two rules of Sir Edward Sugden's, one of which prohibits the appointment of the clerks of solicitors or attorneys, and the other which prohibits the appointment of either solicitors or attorneys or barristers?—I am always governed by them; I consider the rule with respect to solicitors and barristers peremptory, and unless the parties bring in an order which they must get from the Court, enabling me to appoint such a person, I never allow him to be put in nomination or appointed; they do sometimes put them in nomination from ignorance, but they are withdrawn immediately.

3264. Will you state to the Committee the result of your own experience as Receiver and Master, during the five years that you have been fulfilling the duties of that office, as to whether you have procured a better class of persons to fill the office of receiver than existed before?—I have no doubt in the world of it; I have as intelligent men for the most part now as receivers as can be: I mean so far as I am acquainted, or can be acquainted with their conduct; I know a great many of them, and I am in familiar correspondence with a great many of them, and I think, so far as I see, they are experienced, intelligent men, for the most part.

3265. And men that have done their duty, as far as you can judge from the documents that have come before you?—There have been, perhaps, occasionally, things which I have had to correct and put right, but I find, for the most part, that they are quite correct.

3266. In addition to the beneficial changes in reference to the selection and appointment of receivers in the lettings which take place, has the old practice been departed from?—Almost entirely.

3267. Formerly, I believe, the practice was, that when a farm was to be let, over which a receiver was appointed, it must be advertised for a particular day, and the tenantry attended, either in person or some one for them, to bid for the estate?—That was the practice.

3268. It was let to the highest bidder for seven years, pending the cause, and then the tenant had to take out a very onerous and expensive lease?—That was the practice.

3269. In addition to taking out an expensive lease, the tenant had to give security, by recognisance, for the rent?—He had, with two sureties.

3270. Has not that practice been found a very injurious one, and has it not been entirely departed from?—Entirely.

3271. You do not now let, I believe, by public advertisement?—Sometimes in the immediate neighbourhood of Dublin, I find, perhaps, it is the better way, where it is not inconvenient to the tenants to attend; when the parties think they will probably get a better rent for it, I occasionally yield to their wish to do it, but it is quite an exception, and a rare exception.

3272. Will you state to the Committee what is the general practice in reference to lettings now in your office?—The general practice is this: when lands are out of lease the receiver brings a statement before me, saying that they are so, and he desires my directions as to letting. I tell him to advertise for tenants, and to put the advertisement in some of the newspapers, and to circulate handbills in the neighbourhood, relating that such a lot of land, describing it, is out of lease, and that he has authority to take proposals for it for either seven years, pending the cause, or from year to year, according as I direct him beforehand, and he is directed then to bring all the proposals that he gets into my office on a particular day. I should have said that upon the statement of facts

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he issues a summons, which gives notice to all the parties connected with the estate to come in and hear, if they please, the directions given. That summons stands adjourned to a particular day subsequent to the date of the advertisement upon which he is to bring in all the proposals he has received; he brings those proposals in, and with them he makes an affidavit, stating the order that he has got to let, the manner in which he circulated the advertisements, and that the proposals which he has annexed to the schedule of the affidavit are the only ones that he has got. He is obliged then to state in the affidavit whether he recommends any of those tenants to be accepted, and if he does, he states which of them. Further, he is obliged to state upon oath whether or not he thinks the rent proposed to be a fair, reasonable, and proper rent for the land. If he has recommended a proposal to be accepted at a lower rent than any he has got, he is obliged to state the reasons why he prefers one tenant, who has offered less, to another tenant who has offered more. The whole of those details are put into an affidavit. Upon his bringing in that affidavit, and re-entering the summons, he gives notice again to all the parties; I do not mean to say that I always require the attendance of the receiver, but I uniformly require the plaintiff in the suit and the respondent, the owner of the land, to be served, and upon the re-entry of the summons I go into the question with them, and hear whether they are satisfied with the recommendation of the receiver, and if they be, I then say I approve of such a proposal, and I direct the receiver to take care that he completes the tenancy without any unreasonable delay.

3273. Is the tenancy under the Court now by lease, or by what we know in Ireland as an accepted proposal?—There may be both. If the advertisement states that the tenant will be obliged to take a lease, he always states in his proposal that he is willing to take out a lease under the Court, when he shall be required; but I should say myself that I endeavour, and I think it is a better term, to create a tenancy from year to year. The rule of the Court is to let for seven years pending the cause. I have power to depart from that rule, and I do depart from it whenever the parties to the suit are willing.

3274. That is, by substituting a yearly tenancy for a tenancy for seven years, pending the cause?—Yes.

3275. A tenancy from year to year having this advantage, that it can be terminated by a six months' notice to quit?—Yes. In minor matters I should say the practice is sometimes different, for there, the Court having power to let for 21 years, or any less term, we avail ourselves of that power when it is desirable.

3276. In other cases, you generally recommend a tenancy from year to year, as being more beneficial?—I do.

3277. Supposing the cause to terminate from any circumstances, and the owner be remitted back to his estate, he may continue a tenancy from year to year, or he may determine it by six months' notice?—Yes.

3278. According to the general practice in your office, is it usual, in such cases at least, to have the letting by proposal in place of by lease?—It is; in small holdings I cannot oblige a tenant to take a lease if the rent is under 5 *l.* The rule of the Court is, that where the rent is under 5 *l.* it shall be by agreement; it is termed a proposal, but it becomes an agreement when it is approved of. Where the rent is over 5 *l.*, the rule of the Court is that it shall be by lease, unless I direct otherwise.

3279. As a general rule, do you commonly direct that the letting shall not be by lease, but by proposal, unless in large cases?—I consult the parties, and if they agree with me, I let the receiver advertise for tenants from year to year by proposal.

3280. I believe the proposal is not subject to any stamp duty?—One shilling, I think, is the solicitor's charge for making it out; there is a stamp duty upon it of 2 *s.* 6 *d.*; the whole expense is 3 *s.* 6 *d.*

3281. I believe as contrasted with the previous practice, the tenant had to pay some 10 *l.* or 12 *l.*, or often more?—I do not think it amounted to so much as that.

3282. Does the tenant at present give security by recognizance?—Not at all.

3283. Another departure from the old practice is, that you have abolished the tenant's recognizance?—Entirely.

3284. The tenant is saved that expense, which expense was found to be no real security to the parties?—None in the world.

3285. You say that you require the parties upon the letting to attend before you;

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you; perhaps you would more correctly express it, by saying that you give them the opportunity to attend if they please?—I meant that.

3286. Supposing the parties to the litigation have confidence in the receiver, if they get notice from him that the letting is to take place on a particular day, they need not attend, and probably would not attend?—They need not.

3287. According to the altered practice, has the receiver great facility in communicating with you, and obtaining your direction upon each and every portion of his duties?—There is the greatest possible facility for communicating with my office, and he has every reasonable facility of communicating with myself. With respect to a receiver, I never make a difficulty about it. I am not talking of solicitors for receivers; if any receiver comes into my office at any time, he has the utmost facility of communicating with me; he may go into my examiner's office, and there he may get any information he desires; or if my examiner cannot give it to him, he will come to myself, or bring the receiver in. I give the information to him readily.

3288. By communication, I mean communication by word of mouth with yourself?—I mean the same. I communicate with the receivers as freely as I can. I get letters from receivers in the country constantly, but I should add, that I think it better to have a record in my office of any directions that I give, because I found when I commenced to carry out the system I was subject to misrepresentation of what I had said; the receiver afterwards would say that I had told him to do so and so. From the number of receivers in my office, I could not pretend to recollect everything that occurred in every case if a receiver had full liberty to come and ask me any question as to what he was to do in any one case; I therefore thought it right to require the solicitor for the receiver to file a statement, or if he had already filed one, to re-enter in my book the summons upon which he got the direction, and thus the case appears upon my paper before me, and I have a written record of what I directed him; he is charged nothing for the re-entry. I have found that a much more desirable method than allowing solicitors to come and ask me questions, which was the common way of doing it, to the interruption of the other business in my office.

3289. You require a written statement, which is subject to no stamp duty, and requires no particular form by the receiver, of the point upon which he requires your direction; he re-enters the case on your paper, which is subject to no expense, and upon that written statement you give him a written direction?—When he has filed a statement, and issued the summons upon it, I allow him to re-enter that summons repeatedly; it is solely for the purpose of preserving a record in my office of what directions I gave him, that I should not be left to the fallible testimony of my own memory, questioned perhaps by his word as to what was done.

3290. Is not that done in the simplest and most inexpensive form?—Very much so; I believe the solicitor has 6 *s.* 8 *d.* attendance upon it, and that is the entire cost.

3291. In reference to the position of the tenants themselves, have you, under the new practice, derived increased powers of abating the rents of tenants in proper cases?—The rule or order of the Court to which you have adverted, directs that application shall be made to the masters, in respect of abatements; but I think that merely transfers to me the authority which the Lord Chancellor or the Master of the Rolls has, and I do not think that that confers upon me any power that the Court had not; in exercising the authority so given to me, I feel myself controlled by the rules of the Court, and what the Lord Chancellor or the Master of the Rolls would have done, if the case was brought before them.

3292. Has the interpretation which was put upon the powers of the Court by Lord St. Leonards, when he was Lord Chancellor for Ireland, continued from that time to the present, that the Court has not authority, against the will of the owner of the estate, to abate the rent?—It has; it was so decided upon an appeal from the Master of the Rolls.

3293. That is to say, the Court cannot do more than the owner himself can do?—Quite so; more especially where the tenant holds by lease, and the effect would be to break the lease without the owner's consent.

3294. Without his consent and against his consent?—Yes.

3295. Do you hold any different rule when the letting has taken place under the Court?—I do; I conceive there the Court has full power; it has the right to release

release any obligation which was made with itself. In point of fact, when leases are made, they are made by me, and in my name; I am the grantor in the lease.

3296. You are, in point of fact, in those lettings the landlord?—I am.

3297. Do you work out the power in that instance, if the parties do not consent; you may discharge the tenant and seek a new tenant?—I conceive that I am the landlord *pro hâc vice.*

3298. The case in which you hold, or the Court holds, that it cannot act against the consent of the owner, is where the tenancy is under a letting by the owner, and not under the Court?—Yes.

3299. In reference to lettings under the Court, you do exercise without consent and against consent the right to reduce and regulate the rents in proper cases?—Certainly.

3300. What has been the practical consequence of your exercising the power of abating the rents?—I think it has been most beneficial, and has relieved a tenant when he was under pressure: and on the other hand I have exercised the same authority when the pressure ceased of putting the rent up again; I have done so constantly. During the time that succeeded 1846 down to 1853, there was a great deal of pressure; the landed interest was very much depressed; agricultural produce was very low, as everybody knows, and I then exercised the power of abating; but afterwards, when war prices came, when agricultural produce got up, I made rules that abatements should be discontinued, either in whole or in part, and I put the rent back again to a reasonable and fair rate.

3301. Either in an application to abate rent or increase the rent which had been abated to its original standard, have the parties who are interested notice and opportunity to attend before you?—Always.

3302. Do you find the owner assist you by facts in the exercise of your judgment upon any particular case?—Sometimes.

3303. Have you always the assistance of the receiver?—Always; it is almost always done upon his opinion. Whenever an application is brought in by tenants to get an abatement of rent, I make them state the circumstances by affidavit which induce them to come in. I make an order then that a copy of that statement should be furnished to the receiver, and that he shall inquire, and report to me upon oath, whether, in his judgment, the rent payable by that tenant is a reasonable rent, having regard to the locality, and the price of agricultural produce of the day; that if he has any difficulty himself in coming to an estimate with respect to it, he shall have power to call in the assistance of an intelligent farmer in the neighbourhood, or a landowner or surveyor, or any other person who can give him fair and proper advice, and I make that person join him in the affidavit, which he transmits back to me. I then come to a decision upon whether it is a reasonable application, either in whole or in part.

3304. I suppose the receiver, being generally of the class of persons you have mentioned, is himself able to give you the best advice upon the subject?—Almost always; I have very seldom to go beyond him.

3305. The safeguard is, having got this application from the tenant, and the advice from the receiver in the shape of an affidavit, the parties have the opportunity of coming in before you and objecting, if they think fit?—Yes, and they can file other affidavits.

3306. Upon those affidavits you regulate your judgment, as I collect from you, guarded in the way you have stated; and, having regard to your limited powers for letting for any term, you exercise, as a Master in regard to letting under the Court, the power of a prudent owner?—I do very much what I do with my own estate.

3307. Was not one of the complaints of the old system of the Court of Chancery in regard to receivers, the very limited power of the Court, almost amounting to nothing, to expend money upon either repairs or improvements?—It was.

3308. Do you at present exercise any larger jurisdiction, in reference to the expenditure of money upon an estate, either for repairs or improvements?—I do both; I should say, however, that the power is limited very much with respect to improvements; it is never exercised without consent.

3309. With respect to repairs, you do exercise a large jurisdiction when you think expenditure for repairs is necessary?—I conceive the mode in which that is done is rather by the Court than by me. It is done by a process which perhaps I had better describe: if the receiver (and it is one of his duties) thinks that a sum of money is required for repairs, he brings in a statement before me as to it.

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If it is a small sum, I do not hesitate to tell him to do it; if it is a considerable sum, I then make a report upon it to the Lord Chancellor, stating that in my opinion it is for the benefit of the parties that such an expenditure should be made; that report will stand confirmed after being so many days in the office, and that report being confirmed, gives authority to do it. If it is a very considerable sum, I direct that the report shall not be confirmed by lying in the office merely, but shall be moved at the Rolls.

3310. It is brought before the Master of the Rolls entirely with a view to notice to the parties?—Yes.

3311. I believe the report you speak of is a statement in the simplest and shortest form, that it is your opinion under certain circumstances that so and so should be expended?—It is.

3312. According to the practice of the Court, if nobody objects, that report stands confirmed after a certain number of days, and you may act absolutely upon it?—Yes.

3313. It is only in a special case of considerable magnitude that you direct the report to be specially moved before the Master of the Rolls?—Precisely.

3314. That involves the parties in expense, does not it?—Yes; I think it would be an improvement upon the system, that I should have power to make the order directly, instead of doing it indirectly by a report or order to be confirmed in the court.

3315. I believe under the powers given to the Lord Chancellor by the 30th section of Sir John Romilly's Act, he might by a general order empower you to make the order direct without sending it before the Master of the Rolls?—No doubt, and I think it would be better.

3316. Therefore we do not require any new legislation, but merely that present legislation should be carried out if the Judges of the Court thought fit to do so. You have been speaking in reference to expenditure or repairs?—Yes.

3317. As to improvements, are your powers larger now, with reference to improvements?—I do not consider that I have power at all to lay out money in improvements, and I do not think the Court has. If the parties sought to have it done—I am not speaking of minor or lunatic matters, I mean the ordinary cases of estates under the Court, at the instance of creditors—I would not sanction any improvement which I did not consider perfectly analogous to a repair. If they came before me, I would say, This is a thing that is impracticable; or if I thought there was a feasible case made out for it, I would send it to the Master of the Rolls, in the same way, and direct it to be moved in the manner I have described. I would not take it upon myself.

3318. If a tenant were to represent that by an expenditure of 5 *l.* an acre upon 100 acres of land, the land might be very much increased, say doubled in value, should you have any authority to lay out that sum of 500 *l.*?—None in the world.

3319. Supposing that case to be brought before you, and the parties to the cause and the owner of the estate, upon notice appearing before you, consenting to the expenditure, should you have power to do it?—I would do it on my own responsibility.

3320. Supposing the owner did not consent?—I would not do it upon the owner's consent alone; I would require the consent of the creditors.

3321. Having that consent, should you have full power to authorise the money to be laid out?—I should not inquire into my power; I would do it, and I do not think it would be questioned anywhere. I do not know that it bears inquiry, whether I have power or not.

3322. Do you hold that consent would give you jurisdiction, whether you had it originally or not?—Yes.

3323. In reference to accounting by receivers, are there not additional facilities now, according to the new system, for compelling a receiver to bring in his account, and pass that account when it is brought in?—There are penalties prescribed by Lord St. Leonards' rules, but I do not think there are any additional powers; what he did by his rules was, disallowing the receiver's poundage and the costs of his account if the account is not passed by the time prescribed by the order, or when I direct it.

3324. Without saying that it is 13 months, we may say substantially that a receiver ought to account once a year?—He ought, if it be an estate that will bear the expense of an annual audit; but I have in many cases directed that it should

not

not be done every year, but that it should be done every second year, or every third year.

3325. As a general rule, the receiver is to account once a year, is he not?—He is.

3326. If he does not bring in an account once a year, I believe one of the penalties by the existing practice is, that he forfeits his right to the receiver's poundage?—He does.

3327. And he may forfeit his right to the expenses of passing his account?—Yes.

3328. In addition to those penalties imposed upon him, and the remedies in such cases attaching for non-attendance to the rule according to the existing practice, do you take any other means to compel the receiver to bring in his account?—I at one time tried originating myself, or in my office, the calling upon the receivers to come in and account. I used to go through my receiver's book and see whether the receiver had accounted within the time he ought to have accounted or not; if he had not, I then made my clerk write to the receiver or the solicitor, if we knew him, to ascertain why the receiver had not accounted. I found generally that there was some good reason assigned. I found in many cases that I was writing to a receiver who had ceased to be a receiver long ago; that the case had been wound up. I should say that we have a very imperfect mode of ascertaining when a receiver ceases to be under the control of the court. The solicitors may get an order discharging the receiver, and if they do not bring it in, and enter it in my book, I have no means of knowing. There are 939 receivers upon my book. By sending over to the Recognizance-office to find the number of recognizances entered into, and the number that had been vacated, I ascertained that many receivers had never perfected their security, and completed their appointments, and that many had been discharged. It very often happens in small cases, that after the receiver is appointed, when the owner of the estate feels the pressure upon him, he comes and pays the money, and gets rid of the receiver altogether; that receiver may remain upon my books for 15 months, or 12 months if he has once accounted without my knowing whether he is a receiver or not. I went through my book, and I made my clerk write to every receiver. I can give the number that came in upon that application; out of the large number written to, I found that a great many came in, and satisfied me that they were not receivers at all, and as to those who I ascertained were in default, I found myself helpless in forcing them. I have called on them frequently very much to give them a spur; but they do not come in; I feel myself perfectly helpless, at least practically so, in obliging them. I always disallow their poundage, and the costs of their account, unless they satisfy me by a very good excuse indeed why they have not passed their account in time; but the only other mode of compelling them is by proceeding against them by attachment. That course of proceeding, I think, is generally much more efficiently exercised by one of the parties in the suit. They have full power of knowing, because my book is always open when a receiver has not accounted; they can ascertain when he accounted last, and when he ought to have accounted, and if the solicitors feel that it is the interest of their client, they can put pressure upon the receiver. I grant a summons immediately, and they issue the summons, and that receiver's account never passes until he pays the whole expenses of the proceedings which are taken to force him to account; it may be an oversight; they generally come in at once and file the account, and pass it. I let the account pass at once, upon the receiver paying the expense of the solicitor who issued the summons to compel him to account.

3329. In such a case the estate is not burdened with the expense?—No; I make the receiver pay it personally.

3330. I believe the parties to the cause have every facility and every means of compelling the receiver to account?—Yes, there is no difficulty in the world about it.

3331. If the receiver does not account, they have also every facility to get him removed, have they not?—They have.

3332. I believe I may say with perfect correctness that if a receiver has received rents and kept them in his pockets, the parties in the suit have greater facilities to compel him to refund than any private owner has against his own agent?—Yes; they have nothing to do but to issue a summons, which is a summons calling upon him to show cause why an attachment should not issue against him for not accounting. Upon my giving a certificate, the parties go for a side-

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bar rule for an attachment; that attachment will be made absolute at once against him, and upon the production of the absolute order against him at the Rolls, he is removed at once.

3333. He is committed into custody, if you can catch him, for not passing his account, and the very fact of an application to remove him would show that he has been guilty of a breach of the Roll in that respect?—Yes; I am speaking very much with respect to the old practice, because I suppose, from the feeling or the impression which has gone abroad with respect to receivers, this Committee will be surprised to hear that I never yet have gone that length in respect to any receiver who has been appointed since 1850. The summonses issued from my office to compel receivers to account from the 1st of January 1851 down to May 1856 were 51 only; that number spread over the period from 1851 to 1856, applying to 700 or 800 receivers, is not a very large number when you take into account that the default may arise from neglect; from a slip without the least itention of doing wrong. The number of summonses was, as I say 51, and I do not think that I granted a dozen certificates. I am not sure there was more than one or two attachments issued since 1851 against receivers for not accounting.

3334. Can you tell the Committee, in point of fact, in your office, the amount of money, if any, that has been lost since 1851 by the default of receivers in any shape; for instance, the receiver not having paid in the money which he has received?—I do not think there has been 1*s.* lost in my office since 1851; I never heard of it, and I do not know any one case of a defaulting receiver since 1851.

3335. Now, as to the payment of the funds in the receiver's hands, I believe the practice is, if there is a balance in his hands you make an order upon him forthwith as to how the balance shall be disposed of; that is, if there is no particular order of the court to apply it in any particular way, you direct that it shall be invested for the benefit of the parties?—Yes.

3336. It may happen that there are what are called continuing orders; that is, court orders, either the Master of the Rolls in his court, or the Lord Chancellor in his court, has made an order that the receiver shall apply the rents, as they reach his hands from time to time, in a particular way?—Or that he shall pay one demand; there not being a continuing order, the court may have made an order that the receiver shall pay such and such a demand.

3337. If the rent of the estate is subject to a jointure of 500*l.* a year, that being payable from time to time, the receiver would apply the rents in payment of the jointuress's demand?—Yes; if an order is obtained for the purpose.

3338. Or in the payment of any other demand, or in the payment of arrears of interest upon incumbrances?—Yes.

3339. It may happen that the receiver does not receive more rents than are required to meet the periodical payments, and therefore he may not, during the course of the year, have any balance in his hands, being subject to orders to apply the money?—I think that is so in the majority of cases now.

3340. The parties look to that as best serving their own interests, preventing an accumulation of interest on the demands; but supposing at the end of the year the receiver has a balance of any considerable amount, as to which there is no order directly applicable, you make a minute upon his account that he shall invest the money for the benefit of the party?—Yes; within a fortnight.

3341. If the receiver does not obey the order in that respect, is it not open to any of the parties to apply for a certificate for an attachment to attach and remove him?—Yes.

3342. Supposing the receiver turns out not to be solvent, they have a right to resort to the securities that he gives by his recognizances?—They have; perhaps I should add that there is a further penalty upon the receiver if he does not pay the money, if the order be to pay, or invest it within the time that is prescribed by my order; my examiner has strict directions, when his next account comes in, that the first inquiry he shall make is what has become of the balance upon the last account. He looks to the date of the vouchers if the payment was to an individual, or he looks to the certificate of the accountant-general as to the date of the lodgment, and if it is a day behind the time within which he was directed to lodge it, the receiver loses his fees upon the next account, and he is charged six per cent. upon every shilling that he has kept in his pocket from the time that he was ordered to lodge it until the time that he paid or invested it.

3343. The result of all these checks and safeguards which now exist date from

1851 to 1856; are you in a position to state that substantially there has been no money lost by the default of receivers?—I do not know of any.

3344. I also gather from your evidence that during the time you have been acting as Receiver-master there has been a gradual reduction in the number of receivers appointed; that is, the number has been less each successive year?—I cannot say that there has been a reduction of the number in my office, because they have all come into it; there are less each year.

3345. Your powers are very considerably limited in reference to the value of the tenancies that you can create in minor and lunatic matters; would you consider, in regard to the appointment of receivers by judgment creditors, or incumbrancers, that it would be wise and expedient that the Masters in the Court of Chancery should have power to let for 14 or 21 years with the Incumbered Estates Court in existence. I refer to an absolute letting not depending upon the cause, say for 14 or 21 years?—I speak with considerable diffidence upon that point. I know that my opinion differs from the opinion of a great many persons for whose opinions I entertain the greatest respect. My opinion is, that it would not be desirable, or if such a power existed, it would not be judicious or proper to exercise it. In the first place, I think it is a very hard measure with respect to the owner, if you take his property out of his hands to manage it for him in a suit; perhaps he may get over his difficulty; he may clear his estate, and the receiver may be discharged in a year, or two, or three. If he does, and you give him back his estate burdened with tenancies which he probably would not like, it is a strong measure against him. In the next place, if the owner cannot redeem the estate; if it is to go to sale, I am quite persuaded that the value of the property is depreciated, whether you sell in the Incumbered Estates Court or in the Court of Chancery. We know perfectly well that the purchaser would rather have the land without leases upon it, and then he might please himself.

3346. Mr. *E. Ellice.*] As 53 receivers have only been appointed for the property of infants, and one for the property of a lunatic, out of 939 receivers appointed in your office, and as it appears in evidence before the Committee, that including those 939 receivers, there are altogether 2,456 receivers, acting nominally or really, in all the Master's offices in the Court of Chancery, the Committee may presume that upwards of 2,000 of those receivers have been appointed in suits of mortgagees, judgment creditors, and annuitants, or the holders of tithe commutations?—I do not think that that is a legitimate deduction from it, for this reason, that there are much fewer receivers in minor and lunatic matters in my office than in the offices of the other Masters. I should say that any other Master's office would show a greater number of receivers in minor and lunatic matters, because I have not been long in the Court of Chancery. The Court of Exchequer had no minor or lunatic matters, and therefore none of the old receivers in my office could be in minor or lunatic matters; they could only be so as to appointments since 1851.

3347. All appointments of receivers since 1851 to the property of lunatics or minors must have been made in your office?—They must; I should say they must with a slight qualification, which I may perhaps mention. I have found in one or two cases in which a receiver has been appointed in minor matters that the parties agreed upon a particular receiver whose name was submitted to the Master who had the administration of the minor's estate, for I have not that; I mean the administration of the property altogether; I have merely the management of his landed estate. When the first report is made by one of the other Masters, he may say, "The parties agree that such and such a person, probably a relative of the family, should be receiver;" and there is then a reference to appoint a receiver to me.

3348. Whatever may be the proportion of receivers for lunatics' or minors' property, is not the larger proportion of the receivers appointed, as I said before, in suits of mortgagees, judgment creditors, and annuitants, or holders of tithe commutations?—Yes.

3349. As a receiver would not be appointed unless under very exceptional and especial circumstances in any of those cases in England, would not an assimilation of the practice in this respect in Ireland, with that of England, remove one of the chief causes of litigation and expense in the administration of justice in the Court of Chancery in Ireland?—I have no doubt in the world that the more you diminish the number of receivers the better. I think it is a most expensive mode of managing an estate, and I should be very glad to see it diminished.

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3350. Have not many of the causes which gave rise to the system of appointing receivers on the application of a creditor of landed property in Ireland, been removed by the facilities given to creditors for the immediate recovery of their claims by the institution of the Incumbered Estates Court?—I think they have; but I think that a great number of the receivers have been brought into my office latterly, from the very fact of there being a sale in the Incumbered Estates Court; they have come in for the purpose of appointing a receiver to take the *ad interim* rents.

3351. Those receivers would only be appointed until the estate was sold, and the proceeds distributed?—They would cease to be receivers when that was done.

3352. For a short period receivers would be required in those cases?—From the evidence I have heard here, and what I have read of the evidence, that depends upon what you call a short period; it would appear that in the Incumbered Estates Court now it will probably be some time before a sale can be completed, and the funds distributed.

3353. In all those cases receivers would only be appointed while the claims were put in order, and satisfied by the distribution of the proceeds of the sale?—Certainly.

3354. Would it not, in your opinion, be better at once to sweep away the system of granting receivers in ordinary cases of claims upon landed estates in Ireland, than to attempt to find remedies for the abuse, expense, and delay of the system of which complaint so often has been made?—I think in many cases it would, but I think in many cases you cannot dispense with the appointment of a receiver without doing great injustice.

3355. Those cases would be especial cases, and not the ordinary cases of claims upon landed property?—They would.

3356. Mr. *Whiteside.*] Would you be surprised to hear that there are only 17 receivers in lunatic matters, and 57 in minor matters; do you know how that is?—I have not the least idea; I am quite sure that what Mr. King says is correct; I know that there is not a more correct officer in the court.

3357. *Chairman.*] Your view, I collect, is, that in order to mitigate the evils which flow from the system of receivers, it does not require so much an alteration of the present practice as to facilitate the sale of an estate?—I think so.

3358. In fact, a judgment creditor now cannot get a receiver otherwise than by a suit which he institutes for the purpose of having a sale?—He cannot, but under the late Mortgage Act he can get a receiver upon a judgment without the slightest difficulty; he has nothing to do but to register the judgment, and he can get a receiver upon it.

3359. In the suit which a mortgage creditor institutes under the statute, he prays a sale of the estate, does not he?—He does, unless the sale is going on in the Incumbered Estates Court, and he requires an *ad interim* receiver.

3360. What I called your attention to was, that in his suit he prayed a sale, and you gave him a receiver as a relief incident to the sale, to catch the rents in the meantime, or that you mitigated the evil pending the sale?—Yes.

3361. Have you made yourself acquainted with the course of practice in this country, in reference to the appointment of receivers?—I have partly done so, so far as I could, and had the opportunities. I have employed part of the time since I have been in London in endeavouring to make myself acquainted with the system in England.

3362. I believe with that view you went to the offices of the Court of Chancery here, and availed yourself of the means of information that were then placed at your disposal?—I availed myself of the fact of having been educated under one of the Masters of the Court of Chancery in England. I went to his office, with the view of seeing how he managed his estates; he was not at home, but I called on Master Vaughan Richards, and he put me in communication with his chief clerk; and I discovered, as far as I had time, the practice in England.

3363. I am speaking now of practice and procedure; have you been able to form a contrast between the English practice and procedure and the Irish practice and procedure?—Partially; with respect to the receivers in that office, I acquired a good deal of information.

3364. In reference to the procedure of the two courts, can you inform the Committee which is the most simple, according to such means of information as you possess?—The proceedings in the Masters' Office here at present are very much

much the same as in Ireland; I am not speaking now of the practice under the New Procedure Act; there is very little difference indeed between the practice as it existed in the offices of the Court of Chancery in Ireland previous to the late Act, and that in the existing Masters' Offices in England.

3365. Then the altered system, I collect from you, would be a superior system to the one at present existing in the Masters' Offices in England?—I have no doubt that all the advantages which we have in the management of estates in Ireland, under the present rules, are advantages over the system as it exists in England.

3366. With regard to the expense of those proceedings?—I think the expense is double or treble.

3367. Which is double or treble?—The expense in England is, in my opinion.

3368. Mr. *Whiteside.*] The expense of what?—The management of an estate under a receiver, and the cost of passing the receiver's accounts. The cost of the appointment, and everything connected with it, in my mind, is double or treble.

3369. *Chairman.*] Is that according to the former practice, or the new practice?—I am not sufficiently intimate with any Chief Judge with whom I could take the same liberty as I did with Master Richards; but so far as I have been able to form an opinion, the established expenses now under the new courts are double or treble nearly what the expense is in Ireland.

3370. Sir *E. Perry.*] What do you call the new court?—The new Vice-Chancellor's Court.

3371. *Chairman.*] The new court established under Lord St. Leonards' Act?—Precisely. We will take, for instance, the passing a receiver's account; that is a very simple process, in which the expense may be compared the one with the other. I have here Mr. Williams' book upon the practice of the Court of Chancery, to which he appends a schedule, in which he gives a bill of costs, taxed and approved of, as the proper costs of the passing of a receiver's account; the account was but about 20 folios in length; the amount of the rents accounted for was 782 *l.* 10 *s.*, and upon that account the receiver's costs were 12 *l.* 4 *s.* 5 *d.*

3372. For passing the account?—Yes; the receiver's costs were 12 *l.* 4 *s.* 5 *d.*, of which there was only 5 *l.* 2 *s.* 9 *d.* out of pocket, the balance of 7 *l.* 1 *s.* 8 *d.* being the solicitor's profit. In addition to that, the costs of the plaintiff, who is, always entitled to attend upon the passing of the receiver's account, were 3 *l.* 4 *s.* paid out of the rents, and one defendant is always allowed to attend upon the passing of the account; that defendant is pretty much selected, I believe, by the Master's clerk; his costs were 3 *l.* 4 *s.*, so that the costs of passing that account came to 18 *l.* 12 *s.* 5 *d.* The entire costs of passing a similar account in point of length and, for the same amount of rents in Ireland, would be 5 *l.* 10 *s.*

3373. You are aware that, according to the law of Ireland at present, if a party has a mortgage, he may obtain the appointment of a receiver in either of two ways, either if the interest is in arrear, by applying for a receiver to keep down the interest by the statute of the reign of George the Third, or by instituting what we call a suit for foreclosure and sale, praying an *ad interim* appointment of a receiver?—Yes.

3374. In England the law is, if the mortgagee has the legal estate, and he can enter into possession, the court does not assist him by the appointment of a receiver, but allows him to enter into the actual receipt of the rents, if he pleases?—They will not appoint a receiver for him if he can go into possession himself.

3375. Practically, in your office, in reference to the statute passed in the reign of George the Third, enabling the mortgagee to obtain a receiver when his interest is in arrear, have you known any instances of receivers being appointed under that Act?—Yes.

3376. Have you known many instances?—I cannot tell how many, but there have been a good many.

3377. Bearing in mind the answers which you have already given, that you consider the appointment of receivers a very great evil, do you think it would be wise or expedient to repeal the power of the mortgagee as to the appointment of a receiver to keep down his interest?—I think you might do a good deal of injustice in that case and many others, by depriving them of the right of having a receiver.

3378. Do you consider you would do injustice in a case in which the mortgagee had the legal estate, and power to go into actual possession?—Every person knows that a man who goes into possession puts himself in the greatest possible

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difficulty; to account as a mortgagee in possession is a thing which very few men will subject themselves to if they can avoid it.

3379. Mr. *Whiteside.*] They will cast the responsibility upon the Court of Chancery of managing the property for them, and escape the responsibility that would be entailed upon them if they undertook to manage it themselves?—That they do, precisely as every man does who is appointed a trustee by a will or deed; generally his first course is to file a Bill, and bring it into Chancery.

3380. *Chairman.*] Recollecting in addition to the power of appointing a receiver to keep down the interest, that the mortgagee has the right to institute a suit praying a sale, and incidentally to that sale, to get a receiver appointed *ad interim* to receive the rents; would there be any injustice in driving the mortgagee whose interest was in arrear either to go into actual possession himself, or to institute a suit praying a sale?—I think he ought to be driven to sell if he can; if he has that alternative no one will pity him; if he is subjected to the necessity of going into possession, and being obliged to account as a mortgagee in possession.

3381. What injustice would flow to a mortgagee by repealing the Act of Geo. 3, which enables you to appoint a receiver for interest in arrear?—I was not alluding to that case so much as to the cases of persons who have limited incomes dependent upon the interest of money; they would have no means of immediately getting their interest paid if they are obliged to sell; they may be kept a very long time out of their money; I am speaking of cases of those persons who have very limited incomes dependent altogether upon the interest of money either lent upon mortgages or annuities chargeable upon land.

3382. Looking even at the particular case you have put, would not the inconvenience, to a large extent, be remedied by the power of presenting a petition for sale?—I quite agree with you, that that is a much preferable thing.

3383. Getting an *ad interim* receiver appointed, incident to the sale?—I quite agree in that. I think the Mortgage Act was a very mischievous one, and the late Act making judgment mortgages was more mischievous still.

3384. Under the Mortgage Act, the petition is presented solely for a receiver?—Yes; for a year and a half's interest.

3385. Mr. *Whiteside.*] Are you speaking of the 11th & 12th of Geo. 3, c. 10?—The Act enabling a mortgagee to come and get a receiver appointed for a year and a half's interest.

3386. *Chairman.*] Your view would be, that it would be a matter of sound policy, and not a great matter of public inconvenience, to repeal that Act?—I take it that the public generally would be benefited. I was adverting merely to the question of whether you would inflict individual hardship.

3387. The mortgagee then, I collect from your evidence, according to the Irish practice, whether he has got the legal estate with the right to enter into actual possession or not, has the right to institute a suit for sale, and as incident to that sale to have a receiver appointed?—Such a jurisdiction has grown up in Ireland; has existed for years, and is always acted upon.

3388. And of course carries with it an amount of inconvenience and public injury?—It does.

3389. Having regard to the very large experience which you have had both in the Court of Chancery and in the Court of Exchequer, would you consider it to be an expedient step to deprive the mortgagee of the power that he has of having a receiver appointed incident to the sale, and drive him in every case if he sought to keep down his interest by the rents to go into actual possession?—I think if you can give him the facility of getting a sale in any reasonable time, I would deprive him of the right of getting a receiver at all. I think the right that he acquired of getting a receiver is really incident, if he has any right, to the delay that is caused in getting a sale through the ordinary medium of the court, and I think if he has power to go into actual possession of the property he ought to be obliged to do that, and not be allowed to get a receiver.

3390. That is, if he has the power of going into actual possession, if you facilitate his remedy by sale, you think it would be wise to deprive him of the power of having a receiver pending the sale?—I think it would be for public convenience, but I think he would feel very likely a hardship, at least there are cases in which he would.

3391. With regard to mortgagees generally, is it not the fact that in the larger number of cases the mortgagees have not the legal estate, and therefore not the right

right to go into actual possession?—I do not know any case in which they do not originally in the Bill state some outstanding term, or something of that kind, which deprives them of the power of doing so; they may be stopped if they bring an ejectment.

3392. Mr. *Deasy.*] Is it the rule in Ireland that the mortgagee is entitled in a foreclosure suit, as a matter of course, to get a sale?—I think not; he must always make out a case for it.

3393. In addition to that, is not the mortgagee obliged to show that he cannot have a sale speedily, and that his interest is in arrear before the Court will grant a receiver?—Always.

3394. *Chairman.*] And he is also obliged to show that there are impediments to his going into actual possession?—There are very few cases in which he cannot state that with perfect truth.

3395. Mr. *Deasy.*] In an application to the Master of the Rolls for a receiver, is it not now the practice that the mortgagee is required to show by affidavit to the Court that there is a practical necessity for his obtaining a receiver?—Certainly, he will not get a receiver unless his interest is in arrear, or the fund is likely to be lost by reason of an ejectment for non-payment of rent; he is obliged to show that he has scanty security for his money.

3396. *Chairman.*] From your large experience in Ireland, is it generally the case that a mortgagee has not the power of going into actual possession?—I think it is; I think the owner could in 99 cases out of 100 turn him round, by setting up an outstanding legal estate of some kind.

3397. The affidavit states that as one of the reasons why he asks for relief, by the appointment of an *ad interim* receiver pending the sale?—Always; you uniformly find charges of that kind stated in the bill or in the petition.

3398. Would you consider it a matter of wise policy, in reference to mortgagees who are thus deprived of the power of going into actual possession, to deprive them also of the right of having a receiver pending the sale?—I think not; at least it would be subject to some qualification. I think probably the public would be benefited by such a thing, but it would occasionally inflict individual hardship.

3399. Mr. *Whiteside.*] Seeing that there is a mortgage, and that there must be a sale if you give power to direct the sale to occur in the first instance, is not all the difficulty obviated?—If it is practicable, I perfectly agree with you; the difficulty in that case is to ascertain that there will ultimately be a sale.

3400. You were speaking, as I understood you, in answer to the Attorney-general, of a case in which there is a mortgage for a certain amount, where the mortgagee prayed a sale, and you thought there must be a sale in that case?—I think the court cannot determine whether there will be a sale, until they see the title; the court must inquire whether they can sell or not; and if they can sell, then, I agree that it should be at the earliest time.

3401. I understood you to be speaking of a case in which there is a mortgage upon an estate, and a bill filed by the mortgagee praying a sale?—Yes.

3402. In 99 out of every 100 of such cases will not a sale take place?—I think so.

3403. If you give the court the power of sale, and they ascertain that it must take place, I anticipate taking the accounts and other proceedings in the cause to direct that sale to take place in the first instance which now takes place in the last instance; what necessity would there then be to appoint a receiver?—I think it would be very desirable to retain power in certain cases to appoint a receiver.

3404. *Chairman.*] Upon the subject of mortgages, your recommendation would be to repeal the Mortgage Act, and to deprive mortgage creditors who have the right to go into actual possession of the power to appoint a receiver pending the sale. You would facilitate the sale as much as possible, and leave the power to appoint a receiver, subject to the control of the court where the mortgagee cannot go into actual possession?—You quite express my opinion upon the subject.

3405. I will now pass from mortgages to judgments. You are aware that, in carrying out the recommendations of the Receiver's Committee, one of the alterations of the law is, that a judgment is no longer, in Ireland, an assignable security?—It is not since that Act passed.

3406. It is no longer assignable, so as to convey the legal interest of the judgment to the assignee?—I mean that.

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3407. The Act of George II. has been substantially repealed, as to the mode in which judgments are to be recovered?—Yes.

3408. That recommendation of the Committee has been carried out by the Act which passed in 1849, by which the rights of judgment creditors were further limited, and especially by limiting the right to appoint a receiver, where the demand did not exceed 150 *l.*?—Yes.

3409. You, I believe, think that was a beneficial alteration of the law?—I do, certainly.

3410. Coming to the Act of 1850, the 13th & 14th of Victoria, chapter 29, the application of that Act is this, that a judgment before the passing of that Act was a floating charge, when once it was recovered upon all the property of the judgment debtor?—It was.

3411. And, consequently, if at the time of the judgment being recovered, the judgment debtor had any land, or interest in land, or if he acquired any land afterwards, the judgment, *ipso facto*, became a settled charge upon that land?—Yes.

3412. I believe that Act remedies that state of things, in one respect, that the judgment is now no charge upon land?—None in the world.

3413. You may make it a charge, by what is called registering?—Yes.

3414. That is, you make an affidavit, stating the recovery of the judgment, and stating that the judgment debtor is the owner of such and such lands, naming them; and you register that as a mortgage in the Registry Office?—Yes.

3415. In that way the judgment becomes a charge, not upon all the lands of the debtor, but only a specific charge upon the lands named?—Yes; those lands named in the affidavit.

3416. It is in that respect that mortgage suits are now instituted by judgment creditors?—It is.

3417. Is not the suit of this character: the judgment creditor institutes a suit by petition, under the 15th section of Sir John Romilly's Act, in the Court of Chancery, and he prays a sale of the land upon which his judgment is a mortgage?—He does.

3418. It must be a suit, as I collect, from you praying for a sale?—It must, unless he has taken proceedings for a sale already elsewhere, and then comes for a receiver as merely incidental to the sale.

3419. He must come, as respects the suits he institutes, for his mortgage, or he must have instituted a suit in the Incumbered Estates Court for a sale?—Yes.

3420. Mr. *Whiteside.*] Suppose, in the case you have mentioned, that there was 18 months' interest due, would you give a receiver in the case of a mortgage? Yes; as mortgagee the party would be entitled to it.

3421. *Chairman.*] In both cases he gets a receiver, not as having a judgment, but he gets a receiver as incident to the sale for which he applies as a mortgagee? He does.

3422. There is no limit, in that respect, as to amount; it is no matter what his judgment is?—No, the smallest sum, as well as the largest, under the Act entitles him to the relief.

3423. In the Incumbered Estates Court, at present, a judgment creditor, whether he is a creditor by mortgage or under the old law, having a charge upon the estate, may institute a suit, by petition, to sell the estate, no matter what the amount of his charge may be?—He may.

3424. Having regard to your great experience, will you state whether, in your view, it would be wise or expedient in any way to deprive the judgment creditor of his right to the appointment of a receiver, or to limit that right in any particular?—In no case would I give the power to appoint a receiver where it was perfectly plain that the expense of the management of the estate would exceed the amount of interest due to him, so that he could never be benefited in any way by it, which is frequently the case at present. There are many cases of receivers in my office at this moment in which it is quite impossible that the plaintiff in the suit can ever get a shilling out of the rents.

3425. Mr. *Whiteside.*] Who gets them?—The solicitors.

3426. What is the smallest sum for which you have seen, under a perversion of the Judgment Mortgage Act, to which the Right honourable Gentleman lent his assistance, a receiver appointed?—I cannot exactly recollect now, but I have seen many cases in which the demand was not more than 20 *l.* or 30 *l.*

3427. Do you agree in the principle of the Bill which bears my name in reference to that subject?—I was going to say that I agree with the principle of your Bill; that the limitation ought to be with regard to the rental of the estate, and not with regard to the amount of the incumbrance.

3428. You are aware that my Bill provides, that no receiver shall be appointed over any property the rental of which does not amount to 200 *l.* a year. Do you think that is a reasonable limit?—I think it is too much. There are many cases in which the creditors will not get the fruits of their judgments, or the annual fruits of their incumbrances, if your limitation is adopted.

3429. Would not that limitation exempt a great number of estates in Ireland from the paternal management of the Court of Chancery?—No doubt it would.

3430. Would the other limitation of 150 *l.*, suggested by a Member of the Committee, likewise exempt a great many, supposing it was not created by mortgage?—No doubt either limitation would reduce the number of receivers very much.

3431. *Chairman.*] Your view would be, in accordance with the Bill, not to limit the right by the amount due to the judgment creditor, but by the rental of the estate?—I think that would be the best plan; I think the hardship is enhanced where the party has a small demand and the estate is large. I cannot conceive why a person with a small demand should not have the same power of realising his right to that demand against real estate that he would have against personal estate. The limitation ought not to be, in my mind, the amount of the debt, but the amount of the fund out of which the debt is to be got, so that they who sue can benefit?—I think it would come as nearly as possible to what I have said, that it should not pass the point at which it is perfectly plain that the creditor never can get anything, and that the whole proceeding is merely for costs.

3432. Mr. *Deasy.*] With respect to the limitation of the amount, allow me to suggest one class of cases; would not the limitation of the amount to 200 *l.* a year operate injuriously and unjustly in annuity cases, and in many instances in the cases of jointuresses?—Most distinctly; there is one class of cases in which I think the limitation not only ought not to be made, but the Legislature have no right to do it; that is the case of tithe rentcharge. A clergyman made a bargain with the Legislature that he would give up 25 per cent. of his income, provided he had facility for recovering the remainder; the only method of recovering, as against the party not in possession, but liable, is by getting a receiver. If you measure his right to have a receiver by the amount of his demand you exclude him. Very many of the receivers in my office are appointed for cases where there is not more than 10 *l.* or 12 *l.* due to a clergyman.

3433. Mr. *Whiteside.*] Do not you observe that power is given by a clause in the Bill which bears my name, still to appoint a receiver in certain excepted cases which are under the limitation?—I do not think you ought to give the court a discretion in such a matter. I am speaking now of the case of a clergyman whose tithe rentcharge is due to him; I think the Legislature has no right, after the bargain they have made with that clergyman, by the Act which abolished tithe and converted it into rentcharge, giving up 25 per cent. of his income to leave it in the jurisdiction of any court to say that he shall not have a right to recover his demand.

3434. Unless you give him another remedy which is equally efficacious; the Legislature made no bargain that a receiver should be appointed?—I quite agree with that.

3435. *Chairman.*] Is there any other limitation which you would suggest of the right of a judgment creditor to have a receiver, than that which you have now suggested?—I do not know of any now.

3436. In fact, if you deprived the judgment creditor altogether of the right to have a receiver, pending the sale, you might very materially injure existing securities?—No doubt, so long as judgments continued to be assignable securities, and the ordinary mode by which money was raised in Ireland, Lord St. Leonards considered that the habit of the people stood very much in the way. He attempted to limit the rights of judgment creditors, and he wanted to have them registered every five years, but he could not accomplish it.

3437. Mr. *Deasy.*] Is it not the case that an annuitant or a jointuress has practically no mode of enforcing the payment of arrears, except by the appoint-

ment of a receiver?—I think that is another class of persons who would suffer the greatest possible hardship if they were deprived of the appointment of a receiver.

3438. *Chairman.*] In addition to an annuitant and a jointuress having no other efficient remedy than the appointment of a receiver, there are, I believe, a number of estates so circumstanced that the interests of all parties require that the estates should be under the control of receivers?—Yes.

3439. For example, interests created by short continuing charges to be paid from year to year, and from day to day, some of the receivers in the Court of Chancery are in cases of that character?—Quite so.

3440. Can you furnish the Committee with a return stating the nature of the demands in your office, in respect of which receivers have been appointed, and the amount of those demands?—I will furnish the return as nearly as I can; I can give a statement of the receivers, classified into three heads, as to amount of rental of the lands. Of the 742 receivers that have been appointed in my office since the year 1850, 85 are over estates the rental of which does not exceed 50 *l.*; 120 are over estates the rental of which does not exceed 100 *l.*; 162 are over estates the rental of which does not exceed 200 *l.*; and the remainder, being 375, are over estates the rentals of which are above 200 *l.*

3441. Mr. *Whiteside.*] Therefore the number of receivers would be limited under the operation of my Bill, to 375?—Under your Bill there would have been only 375 of those receivers appointed out of 742; I can also give the average rental. The average amount of the rentals over which the receivers are now acting in my office is 463 *l.* a year; the amount of rental over which receivers have been appointed since 1850 and not since discharged, is 307,509 *l.* a year; I do not include in that any estates but those over which receivers have been appointed since 1850.

3442. Mr. *Whiteside.*] Have you included the old receivers in those figures?—No.

3443. Could you get the total of the rentals which are not included in the sum you have mentioned?—I dare say I could get an approximation to it; but I do not think I could give it very correctly.

3444. Sir *J. Graham.*] Can you give any notion of the acreage over which the receivers are appointed?—No.

3445. Not even in your own office?—No; the means that enables me to arrive at the rental is, that the receivers are obliged to give security in double the amount of the rental. You have only to go to the Recognizance Office, and there you will find the amount of the rental.

3446. Mr. *Whiteside.*] Is it not the fact that estates to double the amount of rental over which receivers are appointed, are tied up by recognizances?—Certainly. Every receiver must give security by recognizance in double the amount of the rental, by himself and two sureties.

3447. Then if the rental under receivers is half a million a year, there is a rental to the extent of another million a year affected by the recognizances of the sureties?—I do not think it amounts to that.

3448. Sir *J. Graham.*] Must the recognizance be a charge upon real estate?—They should be a charge generally upon real estate; but I do not think every man who gives security by recognizance, is possessed of real estate; the form is that he swears he is worth so much over and above all his just debts and engagements; and he may consider that oath satisfied by the possession of that sum in personal estate.

3449. Mr. *Deasy.*] Is it not the rule of the court that the surety must be possessed of real estate?—He ought to be.

3450. Do you remember Lambert's case, in which Master Brooke rejected a security for the receiver because he possessed only personal property?—Yes; we are bound to require it if the parties object. If the parties object and say, "This man has only floating property, personalty that he may spend to-morrow," we are bound to see that he has property to which the recognizance will attach.

3451. Mr. *Whiteside.*] Does not the recognizance ride over the whole estate?—Yes.

3452. Therefore, if the owner required to sell his estate, it stands in his way, and until the Chancery suit is wound up, he cannot sell?—No.

Lunæ, 19° die Maii, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Sir Erskine Perry.
Sir James Graham.	Viscount Monck.
Mr. De Vere.	Mr. Whiteside.
Mr. William Fitzgerald.	Mr. Henley.
Mr. Macartney.	Mr. Henry Herbert.

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

The Right Honourable *Abraham Brewster*, called in; and Examined.

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3453. *Chairman.*] YOU are a member of the Irish Bar?—Yes.

3454. And one of the Commissioners who concurred in the report upon the Incumbered Estates Court?—Yes.

3455. I believe you also have had very large experience in the Court of Chancery, and are thoroughly acquainted with the procedure of the Incumbered Estates Court and its operations?—I have had some practice in the Court of Chancery; I cannot say that I am thoroughly acquainted with the proceedings of the Incumbered Estates Court, save such information as I acquired as a Commissioner; I took all the trouble in my power (it is impossible I could have taken more), to make myself master of the subject.

3456. You have a general knowledge of its operations?—Yes.

3457. Your practice in the Court of Chancery has enabled you to form a judgment of the old system, and the new system under Sir John Romilly's Act?—Certainly.

3458. Part of the recommendations of the report of the Commissioners is (I do not profess to give the words), that a court should be continued in Ireland for the sale of incumbered estates, vested with the present power of the Incumbered Estates Court to give a Parliamentary title?—Yes.

3459. You concurred in that recommendation?—Most entirely.

3460. From what you have heard since, and know upon the subject, have you any reason to alter the opinion you then concurred in?—None whatever.

3461. It was part of the recommendation of the Commissioners that this tribunal, whatever it should be, whether a continuance of the present court, or a new court, should also be vested with power to give a Parliamentary title upon the sale of unincumbered estates?—Yes.

3462. In other words, that there should be a court with authority to give a Parliamentary title to a purchaser upon the transfer of land in Ireland, under the judicial sales?—Yes.

3463. That is embracing both classes of estates, whether incumbered or unincumbered estates?—Yes.

3464. You are one of the Commissioners who concurred in that view?—Yes.

3465. Have you had since any reason to alter the opinion you so formed?—None whatever.

3466. Do you think it is expedient still that there should be a tribunal having that power in Ireland?—I do.

3467. Will you be good enough to state to the Committee the reasons which induced you to form the view that the powers of this court should be enlarged to include unincumbered estates?—There are many reasons; but one appeared to me to render it indispensable, which was the great injustice to all persons whose estates are at present unincumbered or were incumbered at any time. It was giving a premium to persons to mismanage their estates; that was one view. Another view, quite as strongly pressed upon my mind, was the great simplification of titles; it would make a new era in fact, and bring us back to the last great forfeiture. At present, anybody who knows the way in which titles have been made out in Ireland, and who has had, as I have, experience in writing upon titles and in conveyancing business, before the institution of the Incumbered Estates Court, must know that it was the invariable practice to require titles to be deduced from patents from the Crown. The patents were, I think, of three different eras: there were the patents of the Revolution of 1688, the patents of the Restoration, and the patents from the reign of Henry the Eighth to the middle of the reign of

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James the First. It was always necessary to examine those patents, in the first place, to see whether or not there was a reversion in the Crown. I think the great mass of the older titles will be found to take their root root from the later years of Henry the Eighth, the later years of Elizabeth, and principally in the earlier years of James the First. Everybody knows that the origin of the title of every acre in five whole counties dates from the time of the settlement of Ulster; and pretty nearly the origin of the titles in two other counties. At the Restoration came the Act of Settlement, and everybody again knows that immense possessions were given to different great people who went to Breda, and who remained loyal to the Crown. On the other hand, all the titles more or less of those who were not regicides, all the adventurers' titles, were confirmed, and a great revolution of property took place. The third term was in 1688, when there was another forfeiture, and the Popery laws commenced. In short, those three periods may be said to be the roots of all the titles, excepting in Connaught, where they are not so clear; but in all other parts of Ireland the roots of all the titles can be found, and it has been the invariable practice among persons in Ireland to require the patent from the Crown in the first place. I believe the general rule was (I can speak from my own practice, and that of really eminent persons whom I could name) to skip over all the intervening time, and the Registry Act; that was in 1708, and from 1708 down to the present time, before the institution of the Incumbered Estates Court, it was indispensable (I go that whole length) to trace the title. It appears to me that any measure by which you can get a short title-deed to start with, would be as great a boon as could be conferred upon any country.

3468. One of the great advantages which you see from having a tribunal with power to give a Parliamentary title, is that, upon the transfer of an estate, you have a plain and simple root of the title from which to start?—Yes.

3469. All you have to look to after that, is to discover whether there are fresh incumbrances upon the register?—Yes; I can speak to this from experience. The Incumbered Estates Court has been about six years in action; it is a rare thing now, compared to what it was, for persons in Ireland to go to the Incumbered Estates Court. I have seen some titles, perhaps I see them every month; and I am asked the question, "May I take the title, starting with an Incumbered Estates Court title?" I say, "Yes;" and there is an end of the matter, and all expense is saved.

3470. According to the common view entertained of the Incumbered Estates Court, you cannot go behind an Incumbered Estates Court title, can you?—I think not. The question has not been raised as a question for judicial decision; but if I were asked my opinion upon it, I should give an opinion certainly in favour of a contract for the sale of an ordinary interest, starting from the title of the Incumbered Estates Court.

3471. Having regard to your own knowledge of the course of conveyancing, and the examination of titles in Ireland, will you be good enough to inform the Committee, whether in your judgment the difficulties of making out titles operated to check the transfer of land in Ireland?—Yes, they must; if they did not operate to check the transfer of land, they operated in a way as injurious. I would not say that they operated to check transfers for this reason; my experience is, that no Irishman ever sells if he can help it. I have read over a good deal of the evidence which has been given before this Committee, and it startled me greatly to find that there was a notion that there would be a great increase of business of certain kinds. It strikes me that that is all a delusion; nobody ever sells land in Ireland until he is forced to do so. The owner in fee clings to the land quite as determinedly as the occupying tenant.

3472. When he is forced to sell, it is a great loss to him?—It is a greater loss to his creditor than to himself; I could give striking instances of it. I remember one case which occurred a good many years ago, in which a title was sent to me; it was certainly a very complicated one, and after I had written upon it (it had been submitted to a much greater person than myself beforehand), the party saw that the difficulties were very great; he went to the person with whom he was dealing for a loan of 20,000*l.*, and said, "I now see the difficulties are so enormous, that I will have no bill of costs. I will make this bargain with you; you shall have 2,000*l.* for costs upon the loan of 20,000*l.*;" that was a tenth of the property. I thought at the time, and have always thought since, that that was a thing to be deprecated as much as anything could be.

3473. That was a payment of 2,000*l.* in lieu of an ordinary solicitor's bill of costs?—

costs?—It was; and my own persuasion is, that the bargain was not an unwise one.

3474. Was not there besides the difficulties, and the incurring an enormous bill of costs, also great delay?—The delay was great; the title was investigated with as much strictness as any title ever was investigated; I had a conscientious feeling about it myself when I was told of the arrangement. The solicitor came most honourably, and told me what he had done, and I perhaps scrutinised the title even more exactly than I should have done under other circumstances. There was an enormous delay in that case; it took more than a year.

3475. In using the word "delay," are you speaking of the transfer of estates generally, before the Incumbered Estates Court came into operation?—I should say this, (confessing that I am myself slow), the titles that came before me at that time, which constituted a great portion of my business, were rarely made out within 12 months, and very often not for three times that period, certainly not for two years; I am sure I am within the mark.

3476. That delay has taken place where there was no litigation, and where the parties were on both sides anxious to bring the matter to a conclusion, one party being anxious to get the money, and the other anxious to part with his money to get the estate?—Yes; I can give a recent instance. I bought myself, within the last year, 13 or 14 acres of land. The man who sold it was as anxious to get the money as anybody could be, but between the time of the sale and the completion of the purchase, which is not more than six or eight days ago, certainly more than a year has elapsed.

3477. Although you were very anxious to press it on?—I was most anxious to buy; I was giving a most exorbitant price; I was a most willing purchaser, and I put the vendor to no expense that I could help.

3478. And very likely taking a title which you would not advise another to take?—I never looked at it; I had one of the most eminent persons to look at it for me. It happened to be a little bit of land surrounded by my own. I had an object in getting it, and the owner knew that, and he had a right to get anything he could for it.

3479. In addition to the evils arising from the great expense and delay in deducing titles in the manner you have described, has it occurred that the value of the estate has been less than it would have been if you had been able to give a Parliamentary title?—Not so much as I understand it has been stated. I know it has been spoken of in Ireland generally by the number of years' purchase; that is not the way it has struck me. The way that it strikes me is, the great clearing away of expense; and the security in that way, the complete security, of course adds to the value of the property. If you have a debenture in your pocket, and can go to the market and sell it, you will get the money at once. In the same way, if you have the debenture which the Incumbered Estates Court gives you, you walk into the market, there is your title, and there is no further trouble about it.

3480. You have, I presume, to a considerable extent, though not practising in the Incumbered Estates Court, had opportunities of judging of its effects upon the country in its operation?—I have.

3481. Will you state to the Committee, in your judgment, taking into account any defects that beset the operation of the Incumbered Estates Court, whether, on the whole, its operation has been beneficial?—My belief is, that it is not in the power of man to do unmixed good or unmixed evil; everything we attempt has good and evil in it; but I should say that the good has greatly preponderated, and I would further say that if it had not been brought into action at the time it was, and if it had not been, as it strikes me, made rather a mixed question, political and social, as well as legal, it would have been nearly an unmixed good. Upon the whole, the good greatly preponderates. The first two years there were some bad things done, but afterwards, for the last three years, and I have had great means of forming a judgment about it, it has worked admirably.

3482. The evils you allude to are forced sales of estates, and sales at diminished value, are they not?—Yes.

3483. And in that way you mean it has been injurious both to the owner and the creditor?—In many instances; as to the owner, it was of little consequence, but as to the creditor it was quite ruinous.

3484. The estate being incumbered beyond any value that could be produced under any circumstances?—Yes.

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3485. In your opinion, for the last three years, have the estates which have been sold in the Incumbered Estates Court produced fair prices?—I think, on the whole, they have sold for their full value.

3486. The estates have not been generally insolvent estates, but estates in which the persons in the position of the owners have had some ultimate interest?—Sometimes: but the Incumbered Estates Commissioners are in the constant process of selling small properties, which are very often insolvent, or nearly so; I have not the means of forming an exact judgment; you ask me my general opinion, and I give you the best I can.

3487. Do you see any good reason, if the court is to be continued to sell incumbered estates, why its jurisdiction should not be extended to the sale of unincumbered estates?—I can suggest arguments against it, but they do not convince me. This danger may be suggested; if unincumbered estates are to be sold, it may be supposed that people will not resort to any court of justice for the sale of unincumbered estates unless they are conscious of a defect in the title; that seems to me to be an argument against it. I really cannot see any other, but when we know practically that every person can place his estate in the condition of an incumbered estate, and bring himself within the operation of the Act, the mischiefs arising from that course are so great, and something yet remains behind to be considered, that in my opinion they are most prejudicial to the country. It has not yet come to be considered whether frauds in sales in the Incumbered Estates Court shall have the effect of frauds in every other transaction in life; when it does come to be considered, it will be a very formidable question; fraud vitiates every transaction according to our principles, and I cannot doubt but that it will vitiate sales in the Incumbered Estates Court in this sense, if you have the two parties to the fraud before you; if the estates get into the hands of third parties it will be different.

3488. Would you class as one of those frauds, a case in which an incumbrance is created, with a view to give the Incumbered Estates Court jurisdiction?—I would not. Perhaps you would allow me to give an illustration of what I would consider to be a fraud, and then you will understand my view better; there may be some ambiguity about my answer upon this point. I will suppose this case, that one gentleman contracts with another for the purchase of an estate, and in doing so a defect in the title is discovered, and a proceeding is taken to bring that estate within the operation of the Act of Parliament, to bring it into a court of justice to get a Parliamentary title; I should consider that to be a fraud.

3489. Assuming that case, according to your view, that fraud might be impeached under the existing law, if the Court of Equity in which it was impeached had both parties before it?—Certainly.

3490. Supposing two parties were contracting, and the intended purchaser said, "I will take none but a Parliamentary title," and in order to give the Incumbered Estates Court jurisdiction, he advanced part of his purchase money upon a judgment on any incumbrance upon the estate, would that, in your opinion, be impeachable?—I think that that transaction would be perfectly unimpeachable. What I mean is this, I think nothing short of an actual fraud would do; an actual fraud must be brought home to the parties concerned in it. The effect would be of very little consequence in the operations of the court, because the next person purchasing would be free from the fraud.

3491. Your view would be, that although there was an actual fraud in the sale under the Incumbered Estates Court, yet if the purchaser parted with the estate in ignorance of that fraud, the title of that party would be perfectly safe?—The purchaser would be perfectly free from all difficulties, no doubt.

3492. Supposing the purchaser had suffered it to devolve upon his descendant?—Then his descendant would be in no better position than himself.

3493. One of the evils supposed to arise from enlarging the jurisdiction so as to include unincumbered estates is, that the Court of Chancery, or whatever tribunal had this new authority, would become the conveyancing court of the country, and be oppressed with business?—I am not satisfied that that would be the case. I am persuaded that it would become the conveyancing court of the country, but I am not satisfied that it would be oppressed with business.

3494. Your view is, that giving this power to get a Parliamentary title upon the transfer of unincumbered estates, would not create a very great influx of business into the court?—My impression is that it would not. My belief is that the great mass of property requiring to be sold has been sold, or is in process of sale, and

and any property of that kind that again came into the market would give no trouble to the Court of Chancery; it would be a very simple thing. The Court of Chancery would be the machine to grind it out.

3495. That is, if the parties went to it?—Yes; nobody would go to the court after a Parliamentary title. I cannot imagine that anybody would incur the expense, and I do not think anybody would give an additional farthing for the property.

3496. You have stated the result of your experience in Irish affairs to be, that an Irish proprietor of an estate does not usually become a voluntary seller, but he only sells when he is forced to do so?—He buys land, and borrows money to pay for it. As to voluntary sale, I do not know of such a thing. When I say I do not know of such a thing, I have known one or two instances, but they were instances, under very peculiar circumstances, of persons who were not actuated by the common Irish feelings.

3497. I believe you are also aware that, under the old system in the Court of Chancery, before the Incumbered Estates Court came into existence the sales were comparatively few?—Certainly; and necessarily, because no sale could then take place in the Court of Chancery but an adverse sale for the realisation of a debt, or sales which I do not class within that range, which were compulsory. In the event of making a man execute his contract, if there was a private contract not intended to be carried out in the Court of Chancery, and the party who was bound by the contract disliked his bargain, he was brought into court to compel the execution of the contract. I do not call that a sale in the Court of Chancery, because that was a private bargain, enforced in the Court of Chancery.

3498. In reference to what you call adverse sales in the Court of Chancery, before the Incumbered Estates Court came into operation, was not it the general rule that the struggle was upon the part of the person who stood in the position of owner, to retard the sale?—It was; he was not the only person that did it, his solicitor sometimes cooperated; in fact, a good Chancery suit was an inheritance. I have myself been at the winding-up of some. I think I was at the winding-up of one that commenced in the year 1710, and I have been at the winding-up of many that have been 50, 60, or 70 years in the Court of Chancery.

3499. Do you remember the case of Hamilton *v.* Hobhouse?—That was quite a young case; it only commenced about the year 1780; it had its origin in this way: it was a case in which the great Lord Mansfield lent his money upon an Irish estate.

3500. Was not the final decree pronounced by Lord Redesdale in 1803?—Yes.

3501. And it was finally wound up in 1853?—Yes; the last portion of the property was not sold till within the last three years.

3502. Can you state the difference between that case and Lord Campbell's case?—The difference is this; Lord Mansfield got all his money, and 6 per cent. interest, and Lord Campbell had 40,000*l.* upon a property worth 24,000*l.*, estimating it at its full value.

3503. Sir *J. Graham.*] Has not Lord Campbell's agent in Galway had some little warning?—I cannot say; I thought Lord Campbell had taken precautions against it, but I do not think they were wise ones.

3504. Did not something unpleasant occur?—I am not aware; it is highly probable.

3505. *Chairman.*] Do you know what period intervened in the Incumbered Estates Court between the institution of Lord Campbell's suit to sell, and the sale of the estate?—I cannot tell at all; the only way in which I knew anything of the case was this; towards the end of the proceedings a person had a claim upon the property, and it was with a view to an arrangement of that claim that I had anything to do with it.

3506. Of course, whether the power to transfer estates and give Parliamentary titles be continued in a separate tribunal, or vested in the Court of Chancery, the title having to be investigated judicially, a great deal of expense must be incurred in each individual case?—I should hope not a great deal; some must, of course; it all depends upon the result of the labours of this Committee.

3507. Do you think the expense would necessarily be such as would deter the owners of very small estates from going in for a judicial investigation of the title?—My opinion is that the owners of small estates, and the owners of limited estates, which form the largest proportion of those dealt with, will not go to any court, they will sell out of court; there is a reason with reference to limited estates,

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which I think will operate very strongly, and always must. The Incumbered Estates Court does not give, and I believe you will find the report of the Commissioners does not recommend, that any assurance should be given against the title of the landlord, and therefore as it is only the title of the party whose property is to be sold which can be assured, persons will not think it worth their while to go into court for that purpose.

3508. By limited estates you mean derivative estates?—I do; a lease for 50 years, or for three lives, or for shorter terms.

3509. Assuming the Court of Chancery to be possessed of this jurisdiction to sell unincumbered estates as well as incumbered estates, do you think in that case it would be probable, where the value of the estate was 1,000 *l.*, or under that, the proprietor of that estate would be likely to incur the expense with a view to get a sale under a Parliamentary title?—That is a question of extreme difficulty to answer; I suppose it would entirely depend upon this, whether or not he made his bargain for the sale upon the terms that he should give a Parliamentary title. I dare say it would come to be one of the elements in almost every contract; I dare say people would say, "I will give you 1,000*l.* if you will give a Parliamentary title, or some lesser sum without it;" that is what strikes me as probable.

3510. Then it would come to a consideration of the expense with the seller?—And with the buyer, whether the buyer would not rather be his own insurer.

3511. Is it not pretty generally the custom in Ireland now, in looking for estates or in lending money upon estates, to ask for a Parliamentary title?—I have often heard it said, that people who want to borrow advertise a Parliamentary title; but I am not so sure of the converse. If I am to answer upon my own experience, I should say no. I believe whenever an opportunity is afforded they advertise, "Wanted to borrow upon a Parliamentary title," or "to lend upon a Parliamentary title;" and I suppose it must be in demand or people would not advertise it. I do not think that independently of the Incumbered Estates Court, traffic in land is a considerable practice in Ireland; therefore when you ask me about people looking for estates, I say, I think it is a very rare thing to find a person looking for an estate in Ireland. If an estate is to be sold in a particular county, which will confer Parliamentary influence, or it is convenient to a portion of an estate in the hands of a gentleman who has money, the land is bought by him, but I do not think according to my knowledge of Irish society (I do not refer to town parks and those sort of things), it is the habit for men to go about the country looking for estates; if they hear that an estate is to be sold they will buy it, but as to looking for estates in which to invest capital, with a view to sell it again, I am not aware of the practice.

3512. Unless in the proceedings of speculators?—One of the great evils of the Incumbered Estates Court, and one of the reasons why I wish to see it abolished is, that it has produced most horrible land jobbing.

3513. Will you describe to the Committee what you mean by land jobbing?—I cannot undertake to describe what has been done, but I do believe that a large number of purchases have been made by people who had no money at all; they make the purchase; there were indulgences granted; they do not pay the money at all events, and they hawk the land about the country, and in many cases make large profits. There have been some dreadful cases of that kind.

3514. Has not the practice of the court facilitated proceedings of that nature, in the readiness with which the name of one person is substituted for another in a purchase?—Yes; I knew an instance of this kind, and it seems to me that the court was shortsighted in the matter. A gentleman had an estate for sale in the court, and he was very unwilling to let it be sold, I never knew anybody more tenacious of his estate than he was; it was encumbered beyond its value; it has been sold three times; he bid the first time, and was declared the purchaser. To one creditor more was owed than the estate was worth; the creditor complained to the Commissioner who sold the estate that it was the owner who had bought it, and that owner had not a farthing; notwithstanding that, the Commissioners declared the owner to be the purchaser. He was called upon to pay his purchase money; I need not say that he did not do it. The estate was set up again, then he got a man of straw to come forward (they would not receive the owner's bidding), and he was declared the purchaser. Of course he could not complete his purchase, and it was again sold within the last fortnight, and a real bidder came forward; the creditor was always bidding; he had his money there, and he was in a condition to bid up to the full value, because it owed him something.

thing more; the creditor was willing to have taken a less amount than the sum due to him, but a third man of straw was put up, and the real bidder was again shut out; and I think the very day before I came away the creditor was declared the purchaser, the fictitious bidder being unable, and the real bidder having refused to complete.

3515. The evil you have described in that particular case arises from some defect, not in the law, but in the practice of the court?—I think so.

3516. For instance, the court does not require any deposit on the sale, does it?—It does, as much as the Court of Chancery. The Court of Chancery does not require, and never did require a deposit, until the order to confirm the sale, which was usually entered immediately after the sale. In the Incumbered Estates Court they began by requiring the whole purchase money to be paid in 14 days; that was the original rule in the court, and everybody paid his money in 14 days. After they had gone on for some time they relaxed that rule. I do not like to speak about it, but it appears to me that they relaxed it with a view to increase the purchase money, and persons were allowed to pay in their purchase money at very long intervals indeed. At present the rule is tolerably stringent; parties have to pay one-fourth of the purchase money in 14 days, as in the Court of Chancery, and in three months, I believe, to pay the remaining three-fourths. I know this more from having been a buyer of land than anything else.

3517. Might not the particularly vexatious proceeding of the owner buying himself, and then setting up a man of straw, have occurred in the Court of Chancery?—I do not think the Master would have accepted the bidding in the Court of Chancery. The Master would have done this; he would have called for a solicitor of responsibility and said, You know what the peril is; and that solicitor would have been answerable. I think I know of one instance in the Incumbered Estates Court in which they made the solicitor responsible. It was in the case of an estate of a noble family either in Clare or in Limerick.

3518. What you point out under the name of land-jobbing, consists of parties not having money becoming purchasers of estates on speculation, and being entered in the court-book as the purchaser, and then using the interval allowed them to bring in the money to get some one to give something for their bargain?—Just so. You will understand the distinction better when I tell you this. In the Court of Chancery if a person who purchased intermediately between the date of his purchase and the date of the conveyance to him, sold the land at a profit, the Court of Chancery would lay hold of the profit and apply it for the use of the creditors; that is the inflexible rule in the Court of Chancery. In the Incumbered Estates Court I know of numberless instances in which before the man walked from the spot in which he had made his bidding, a person gave 50*l.*, 100*l.*, 200*l.*, and 300*l.*, and, I believe, as much as 1,000*l.* for his bargain; the court did not make him account for that, as the Court of Chancery would have done; they never inquired into it.

3519. In your judgment the present practice of the Incumbered Estates Court facilitates proceedings such as you have described?—I cannot say that; but it is done, and it was not done in the Court of Chancery.

3520. In the Incumbered Estates Court, as I understand, the Court knocks down the estate to the highest bidder, as a general rule, without regard to who he is?—Too much so, I think.

3521. In the Court of Chancery, on the other hand, if the Master had reason to doubt its being a real transaction, he would require the intervention of the solicitor, who would be responsible to the court; but that practice is not adopted in the Incumbered Estates Court?—I would not like to go that length. In the case I have named to you, the Commissioner was at every sale apprised of what was about to be done.

3522. Does not it occur to you that advantages may result to estates from allowing that great facility of bidding, and afterwards transferring to another party?—In one sense it may; because, if the transaction is to be carried out, it is to be presumed that some real bidding has stopped short of it, and to the extent of the difference there is an advantage.

3523. Would it not have the effect of inducing a greater number of bidders to go to the court, both persons who wanted to buy for themselves and those who wanted to buy on speculation?—I believe a large number of people go there, as they do to any other auction.

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3524. To the Court of Chancery no parties would go in an ordinary case unless they wanted to buy *bonâ fide* for themselves?—In old times that might be so. If the Court of Chancery had as much land to dispose of, the same thing would have happened there. I would wish to qualify what I have said so far as this; I believe in the Court of Chancery, to a certain extent, the same thing would have been inevitable, but I think there are more checks; it depended not upon the Court, but upon the quantity of land that was brought at once into the market, which made it a natural object for speculation.

3525. There was another practice in the Court of Chancery upon which the Committee wish to have your opinion. If A. B. was declared the purchaser at a certain price, and in the interval C. D. came and offered a higher price, the sale was opened upon his undertaking to pay the higher price?—That was the law of the court.

3526. In contrast with the Incumbered Estates Court, was not it an exceptional case where they opened the biddings upon the sale?—I was not aware that they ever did.

3527. In your judgment which was the preferable practice, refusing to open the sale upon an advance, or a law of the court by which the biddings could be opened?—I think it is one of the most difficult questions that was ever propounded. I may be excused from saying so, as the greatest Judges, including Lord Eldon, have doubted upon the subject. I never could make up my mind which was the best. You are putting the question to me practically, as I understand, and the answer I have to give is, that I never could make up my mind upon it, because I have seen great advantages sometimes and great disadvantages sometimes. I cannot tell you what is the result. I am unable to form an opinion, and if I were to make a law I should not know what to do; the leaning of my opinion is against the opening of the sale, but it is so slight that a very small thing would turn it.

3528. One of the main arguments urged against the extension of the jurisdiction to unincumbered estates has been, that in the case of a sale of unincumbered estates there was a greater opening for fraud, there not being litigant parties before the Court; is that your opinion?—That does not strike me; I think in the sense in which I understand litigant parties, there were no litigant parties in the Incumbered Estates court, that is my answer; I think in the great mass of property disposed of in that court, there were no litigant parties.

3529. Viscount *Monck.*] All parties were anxious to make a good title?—Yes, in the Incumbered Estates Court it is obvious that there is no litigant party. The only case in which I understand there is a litigant party, is with respect to who is to get the proceeds of the estate; with reference to the sale of estates, there is no litigation at all; I have known an instance or two, but in the mass of the property they have sold, there is hardly an instance of it; all parties are anxious that the estate should be sold, and produce as much as possible. The owner, as I have before said, clings to his property, but there is really no litigation. I think I might say this, that there never was an instance in which anybody was interested in showing that an estate had a bad title, and I do not think anybody can point to such an instance.

3530. *Chairman.*] As a general rule in the Incumbered Estates Court, are not all parties anxious for the sale, and are they not interested in covering any defect in the title?—Certainly. The owner himself, who desired to postpone the sale, would not show that the title to his own estate was a bad one. Some of the evidence which has been given before the Committee on this matter is unintelligible to me.

3531. In exercising a jurisdiction of this kind there is this objection, that it may be made the means of working out a fraud, but it does not occur to your mind that the danger is greatly enhanced by the subject being an unincumbered estate?—The only case I can point out is the one I have already mentioned, of people knowing the defects in a title, one man wishing to acquire a particular property which another has to sell, making a court of justice the medium of perpetrating the fraud, and transferring the property from the one to the other. There is a class of cases in which there is danger; that is, in the case of unborn persons, of remote remaindermen, and of springing uses. A vast number of cases of that kind might be suggested, of people coming into existence hereafter whose estates may have been sold without regard to their interests. That is common to all courts.

3532. That may take place at the present moment?—Yes.

3533. Is

3533. Is it your view that the public advantages flowing from having this Parliamentary title more than counterbalance the danger and inconveniences resulting from it?—That is decidedly my view.

3534. In regard to one portion of the jurisdiction of the Incumbered Estates Court, the settling and deciding upon the tenancies, that is, as to the right of possession of occupying tenants, do you consider that is a proper adjunct to the sale in any court having power to give a Parliamentary title?—That is equally the duty of the Court of Chancery, and always was; there is no difference between the two Courts in that respect. The only difference is this; I mean the difference in practice. In theory there is no difference. An estate in Chancery was set up and sold subject to the tenancies. When the purchaser proceeded to the estate to examine it, if he found the tenancies different from what they were represented to him to have been, he would go back to the Court of Chancery, and say, "Either you must take this property altogether back, or compensate me to the extent which I can show I have lost from the tenancies being different from what I had supposed them to be." I could name a case to you in which a purchaser was let off altogether because the difference was thought to be so considerable that he ought not in justice to be held to his bargain. In other cases where money compensation can be given, the Court of Chancery compensates by money out of the purchase money. The tenants are better off in the Court of Chancery than in the Incumbered Estates Court, because in the Incumbered Estates Court they are served with a notice, and if they say and do nothing they are bound by it. In Chancery their rights are not affected.

3535. The difference practically is this, whilst the Court of Chancery settles the rental upon which the estate is sold, the rental does not bind the occupying tenant, whereas the rental settled by the Incumbered Estates Court does bind the occupying tenants?—Yes.

3536. You have heard of some cases of compensation in the Incumbered Estates Court?—I have; and in the Court of Chancery, too. It is quite a common thing to compensate a tenant if any injustice is done in either Court, and he ought to be compensated; but the difference is this: in the Incumbered Estates Court the tenant is bound; the sale is a sale giving a Parliamentary title, and one great element in that is the amount of the rent payable by the tenant and the extent of his tenure. The title would not be a perfect title unless it affirmed these as well as other ingredients necessary for the validity of the title. In the Court of Chancery at present that is not the case; and, in my opinion, perhaps one of the greatest practical benefit of sales under the Incumbered Estates Court is that recognition of the tenantry.

3537. Supposing the Incumbered Estates Court, either from misinformation or otherwise, commits a mistake as to the title of a tenant, and ousts him by sale, what remedy is there for the tenant?—He has none, excepting against the funds in Court. I may add to that, that my opinion is, if this jurisdiction be transferred to any other court the same rule ought to apply; and I do not think there can be a Parliamentary title without it.

3538. Supposing a tenant, under such circumstances, to seek compensation out of the fund in court, upon what grounds ought that compensation to be estimated?—I suppose it ought to be estimated by the value of the thing he has lost.

3539. It would not, in your judgment, be a correct exercise of the power of the court to give the tenant 10 times the value he has lost?—No; the value of what he has lost is what he ought to receive.

3540. Do you look upon that power to compensate tenants as a matter of great value?—That is hardly an adequate expression; I cannot imagine the existence of a Parliamentary title without it.

3541. Have any instances come before you in your large practice in which parties have been injured, or have lost their interest by the exercise of that jurisdiction, and having neglected to bring their case before the court?—I cannot answer that question; I have never had any practice in the Incumbered Estates Court. We had, I think, evidence before us from a gentleman of the greatest experience, Mr. Rolleston, as to middlemen; I believe myself there have been cases in which tenants, ignorant people, and so on, have not put forward their claims, but I really do believe that the instances are so few as not to be worth taking into account.

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3542. In putting the question to you, I did not intend to inquire into cases that came before you professionally?—No case has come before me professionally; I cannot call to mind that I have heard of any case of that sort; it is next to impossible that some small instances may not have occurred, but I think they would be infinitesimal.

3543. With respect to the class of cases pointed out by Mr. Rolleston, in which an intermediate interest has been, to use a short phrase, squeezed out practically, have you known of any such instances?—I never have.

3544. I suppose you are aware of the cases alluded to in Mr. Rolleston's evidence?—But for his evidence I should not have been aware of them.

3545. The Commissioners state in their report that they have come to the conclusion, that a tribunal invested with the powers of giving a Parliamentary title under a judicial sale should be made permanent in Ireland; and they proceed to consider what tribunal that power ought to be vested in, and they come to the conclusion that it ought to be vested in the Court of Chancery in Ireland, that court being reformed in the manner pointed out: do you still continue to entertain the view that that jurisdiction should be vested in the Court of Chancery?—I do. I may say, at once, that I abide by that report in every word and letter of it, but in two particulars.

3546. Will you state the particulars in which you do not adhere to your former opinion?—There was no subject upon which the Commissioners, I believe, felt so deep an anxiety as upon the question of appeal, and none to which they gave so much attention. I am satisfied of that; and certainly, speaking for myself, I never considered anything so anxiously. Since that report was signed it has occurred to myself, and I have mentioned it to another Commissioner, who has authorised me to say that I am expressing his opinion here, that one class of appeal, which is greatly desired by the bar in Ireland, might, perhaps, be provided for; that is, an appeal in causes heard before the Lord Chancellor himself; that is one great difficulty. It has been suggested to me, and, I think, with reason, that if there be a Court of Appeal, consisting of the Lord Chancellor and a Lord Justice, causes might be re-heard by them. There is a right at present to re hear causes before the same judge; that can never be a very useful proceeding unless something has been omitted, forgotten, or overlooked. If only the same argument is to be brought forward, it is of little use under any circumstances; but if there is a re-hearing before the Lord Chancellor and another Judge, I know there is a strong opinion prevalent in the profession that that would be of great use, and save a vast number of appeals to England, because, if the Judge of Appeal and the Lord Chancellor concurred, that would be very apt to satisfy the suitors.

3547. Sir *E. Perry.*] Supposing they differed, how would it be then?—If they differed, that would give great confidence in the appeal.

3548. Sir *J. Graham.*] Is there not this broad distinction between a re-hearing and an appeal, that on an appeal no fresh evidence is admissible, but upon a re-hearing fresh facts may be adduced?—That is so, and it is not so. I should say at present it is not so. When the business of the Court of Chancery in Ireland was conducted upon the old principle of interrogatories, it was so. You could not give any new evidence, that is, you could examine no new witness; but at a re-hearing, if you had omitted at the first hearing to read any portion of the evidence that had been given, you might read it at the re-hearing. You could examine no witness, or give any evidence. Then the mode of proceeding in the Court of Chancery was this. Every witness was examined upon interrogatories; and when the cause came to a hearing you called out the interrogatories the answers to which you wished to have read, and they were read. If afterwards you discovered that you had omitted something of importance, you were at liberty on a re-hearing to call that interrogatory which you had omitted. With that exception, there is no difference between an appeal and a re-hearing. At present that cannot happen at all. Now there is no evidence taken by interrogatory. In our present system, the entire evidence is taken by affidavit or *viva voce.* Practically speaking, *viva voce* evidence may be put down as nil, because it is not allowed except under most particular circumstances. If once an affidavit is in, you may read every word of it.

3549. On a re-hearing, are not new affidavits taken?—No.

3550. The old affidavits alone are admissible?—Yes.

3551. All doctoring of the case on either side is impossible?—Yes.

3552. Do you admit that a re-hearing which permits of re-touching is pernicious?—

cious?—That is a new trial upon newly-discovered evidence; and it is singular enough, in hearing plenary causes, I have stated the rule as it is; but in appeal motions from the Master of the Rolls to the Lord Chancellor, which are very important, further evidence is allowed.

3553. New affidavits, containing evidence of new facts?—Yes. I think I may state that, down to a certain period in Chancery, it was not so; but from that period a change took place, and I think there are cases to be found not very long ago.

3554. What was that period?—In Ireland, in the Court of Exchequer, it never was allowed; and in Chancery I believe it practically was not allowed till Lord St. Leonards' time.

3555. Is that new facility given by a rule of the court?—No; I have heard it very often said in court, "We will bring forward further affidavits," and then there was a great struggle upon it; but finally they were allowed.

3556. Do you consider that new practice pernicious?—I cannot say that it is; if I were to give an opinion, I should say that the interests of justice are on the whole more served than the contrary. It, of course, imposes upon the judge great care, and I think, perhaps, it will be found, upon the whole, better; because, in a vast number of cases, the real truth is shut out when that is denied.

3557. Does not that process convert an appeal into a new case?—Speaking logically, that is so. I am not speaking with reference to the name of the thing, but what are the ends of justice. I should say that, upon the whole, I think myself it would be found that Lord St. Leonards never laid down any rule that did not tend to the advancement of justice.

3558. *Chairman.*] Is it not rather a matter of discretion with the appellate judge than a matter of settled practice?—Entirely. I have known affidavits rejected constantly; it depends entirely upon the discretion of the judge, and I think that a very large discretion ought to be left in the Court of Equity. I think there ought to be no limit.

3559. In an appeal from a summary order, made upon a motion, you do not see the same evils flowing from the admission of fresh evidence, as in the hearing of an original cause?—In our practice in Chancery, the parties go on making affidavits in answer to affidavits, *pro* and *con.*, till one is tired.

3560. Up to the time of hearing?—Up to the morning when you are going to make your argument an affidavit may be put into your hands.

3561. Sir *J. Graham.*] Is that practice, however objectionable, much less pernicious than upon the after-hearing allowing fresh affidavits?—Certainly; the curious thing is, that you cannot have fresh affidavits at a hearing before the same judge; it is before another judge that you have fresh affidavits.

3562. *Chairman.*] According to the practice, if the parties are dissatisfied with the decision of the Lord Chancellor upon any case that comes before him originally, they have no remedy except by a hearing before the same judge, or an appeal to the House of Lords?—That is all.

3563. By the report of the Commissioners, and by the Bill upon which my name appears, is it not intended to leave cases heard before the Chancellor alone in the same position as they are now?—Yes; it is in reference to that that I have to make an observation. I remember, when that report appeared, gentlemen for whom I have great respect said that they expected better from me than to allow that point to be passed over. I said that, if I ever gave attention to any subject, it was to that; but I found the difficulties so great that I was unable to satisfy myself. Other persons thought that there might be an appeal. I was one of those who saw the difficulties of it so strongly, that I resisted it; but, upon mature consideration, I think what I have suggested as to a re-hearing is practicable, and would not have any of the mischiefs which I thought I foresaw then. I may mention that I have had a communication with Mr. Blackburne, when this point was discussed between us, since the report was signed, and he authorised me to say that my present opinion had his entire sanction.

3564. You are aware that the various projects with respect to the appellate jurisdiction, occupied the attention of the Commissioners very much?—Yes.

3565. And that every proposition which was made was fully considered?—Yes.

3566. Especially at the two meetings in this country at the Rolls House?—Yes.

3567. The alteration that you would suggest at present is, that whilst by the

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recommendations of the report the appeal to the New Appellate Court is confined to appeals from the Master of the Rolls or the Vice-chancellors, you would in place of a re-hearing before the same Judge, have an appeal to the Appellate Court?—Yes. I contemplate, as I understood the Commissioners to have contemplated, that a very large portion of the most important business of the Court of Chancery shall still be done by the Chancellor. I should never have put my name to that report if I had not so considered. There is a large class of business that does not require any further inquiry than what takes place in open court before the Chancellor. All that business (and it is most the important) is that which settles the law of the country, and I should expect that it would be done by the highest tribunal in the country.

3568. Do you think from your knowledge of the business of the Court of Chancery, that the Irish Lord Chancellor would be both able to attend to that branch of business to which you allude, and also attend to the appellate jurisdiction?—Yes.

3569. Will you describe to the Committee the branch of business to which you have alluded in your former answer as being so important?—Specific execution of contracts, all cases of frauds, and the construction of instruments.

3570. Including wills?—Including wills; of course, all that I should expect the Chancellor would do. There is a case at this moment pending in which all that the parties desire is, to have a judicial determination; there is nothing more; there is no dispute about any fact; it is simply a question of legal construction.

3571. Sir *J. Graham.*] The view which you have just stated to be confirmed by the high authority of Mr. Blackburne would be with respect to the highest branch of business, that henceforth it shall still be transacted by the Lord Chancellor himself, and there shall be only an appeal in Ireland to the Lord Chancellor himself with one other judge?—There is no other tribunal.

3572. With respect to all other appeals from subordinate authorities, there would be the satisfactory tribunal of two judges hearing the cause for the first time?—That is the grand advantage.

3573. With respect to the most important business which you have described, the appeal would be less satisfactory, because there would be only one other judge who hears the cause for the first time?—Unquestionably. It is to be presumed that the Lord Chancellor will be the highest authority in the country; and because of his high office, and the necessity of keeping him in his high position, I think it is indispensable that he should not have anybody set over him. I cannot form a court of appeal in Ireland without forming it of his subordinates.

3574. Would not the effect be, that if the Lord Chancellor adhered to his original opinion, and the judge who sat with him differed, the judgment would stand?—It would.

3575. Therefore, as relates to Ireland, an appeal from the Lord Chancellor would be nugatory if he adhered to his opinion?—I quite agree with that, and that is one of the great difficulties that we have. Unless there are two Lords Justices, I do not see how it is to be managed.

3576. If there are two Lords Justices, then the Lord Chancellor would be in the awkward predicament of being overridden by two inferior judges?—Yes.

3577. Therefore, in case the Lord Chancellor adhered to his original opinion, there would be no possibility of redress except by coming to the House of Lords?—Certainly. I look at every question in a practical sense, and I think myself that any judge is the better for knowing that there is an appeal or a re-hearing before somebody else with him.

3578. *Chairman.*] You think that he is more careful?—Yes.

3579. Sir *J. Graham.*] Without overriding the authority of the Lord Chancellor by exposing him to the adverse opinion of two inferior Judges, you think the consciousness that there will be a re-hearing, even before himself with another Judge, will be a salutary check?—That is my impression. I have seen many Judges whose candour has been so perfect, that I am quite satisfied they would reconsider their opinion, and very likely change it, if it were necessary. It is a practical question, and I may be wrong; but I have a strong opinion that the more eminent the person who presides in a court of justice the more satisfactory it will be to him to have another person to sit with him; aye, and to lean upon.

3580. The view which you have just stated is confirmed by the high authority of Mr. Blackburne?—It is.

3581. *Chairman.*]

3581. *Chairman.*] Did not the Commissioners consider very much the propriety of constituting an Appellate Court of three Judges?—We did, and we came to the conclusion that two of them must be inferior to the Lord Chancellor.

3582. Sir *J. Graham.*] What is the precise alteration which you now suggest as contrasted with the recommendations in the report?—Simply, that in addition to the other duties of the Lord Justice, whoever the Lord Justice is, and the higher the better, he should assist in any case of re-hearing, even of the Lord Chancellor's own judgment. A re-hearing is not a matter of right, though rarely refused; it is now very much limited; but I do not know that the Lord Chancellor ever refused a re-hearing, unless it was a flagrant case.

3583. Your proposition now is, that upon every further re-hearing the Lord Justice should assist?—That is my proposition.

3584. *Chairman.*] That would be giving an appeal to the Appellate Court, whether it was formed of subordinate Judges or of the Lord Chancellor?—Yes; my impression is, that very often persons are dissatisfied with the opinion of the Lord Chancellor, when the opinion of the Lord Chancellor is quite right: and I am perfectly persuaded, that if the case were heard before the Lord Chancellor with another Judge, that would satisfy the parties. It has always struck me, in the administration of justice, as the greatest possible benefit that can be conferred upon the suitor, the making him satisfied that he has had justice.

3585. Sir *J. Graham.*] An appeal to England is an expensive process, is it not?—Yes.

3586. Do you think that a re-hearing before the Lord Chancellor and another judge would diminish the chances of appeals to England?—I think there would be hardly one. If the judges differed that would ensure an appeal, and so much the better. You would have great security that it was a grave question that deserved the highest consideration; but if they concurred, what a sanction that would give to the original decree. It would satisfy the parties and prevent appeals.

3587. Would not a re-hearing in Ireland be inexpensive as compared with an appeal to England?—Yes; I think I could tell the Committee the cost of a re-hearing, taking the heaviest case. According to the present state of the Court of Chancery I am satisfied that a re-hearing of a case that lasted three days would not be 100 *l.*, nor near it.

3588. If the Court be well up to its business the delay would be very small, probably not more than two terms?—The re-hearing must be within a month. You cannot re-hear a cause afterwards, unless you get special permission from the Lord Chancellor. The Statute Law is express upon that point. Unless you can make a case accounting for the delay upon the most satisfactory grounds, the Lord Chancellor is not at liberty to re-hear a cause.

3589. You have stated the time within which a re-hearing would take place in Ireland, and the expense of that re-hearing; can you draw a contrast with an appeal to the House of Lords both with respect to time and expense?—I am not able to do so.

3590. Sir *E. Perry.*] Can you give the average expense of an appeal to the House of Lords?—I know that the fee to one counsel, in an appeal to the House of Lords, would be more than the whole costs of a re-hearing in Ireland.

3591. Sir *J. Graham.*] What would the delay be?—Instead of months it would be years. This is my own project. I have thought, perhaps, more of it than any other matter in our report. I have a good deal of practice in the Court of Chancery, and my friends then were dissatisfied with me for not agreeing to what I thought was impossible. I have since turned it over in my mind and conferred more than once with Mr. Blackburne. On Friday we had a long conversation, and he authorised me to say, that he expressly approves of it.

3592. What is the other point to which you wish to refer?—The other point, in which also I have Mr. Blackburne's concurrence, depends upon what both he and I have some apprehension about, in consequence of what we have heard has taken place here; and that is, whether or not the machinery provided for the execution of the work hereafter is sufficient. That has led us to re-consider the matter, and we are both of opinion that, to a certain extent, the recommendation in that report might be modified by continuing the Masters in their present position until not only their own arrears, but the arrears of the Incumbered Estates Court, are disposed of.

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3593. *Chairman.*] Is that the second point upon which you have seen reason to alter your views as stated in that report?—Yes.

3594. Sir *J. Graham.*] The report in which Mr. Blackburne and yourself concurred, recommended the merger of the Incumbered Estates Court, with all its arrears and staff, in the Court of Chancery?—Certainly; and we abide by that.

3595. But you think that the merger or the transfer of the arrears with the staff then recommended would be insufficient for the work?—If I am to answer that question, I think it would make such a delay as to be very unsatisfactory to the public, and justly so. There is a very heavy arrear at present in the Incumbered Estates Court. We had the advantage of having one of the Incumbered Estates Commissioners on our commission, and, as I understood, during the progress of our inquiry, we proceeded upon the basis of its being two or three years in arrear, that is what we in round numbers seemed to think; and that of course, coming upon the Court of Chancery, would be a heavy load, and there would be a great deal of difficulty in getting through the work. If the Masters went on with that work I cannot see that there would be so much difficulty. As I understand, there are two great delays in the Incumbered Estates Court: First, in the examination of the titles; that must necessarily occupy time, because there are only 24 hours in a day, and only a certain number of hours can be devoted to business, and the operation is a slow one. The second occasion of delay is the ascertainment of the rights to the purchase-money when a sale is made; the Masters in Chancery spend a large portion of their time at present upon such matters; that is one of their great occupations, and I do not see why they should not continue to do that with respect to business from the Incumbered Estates Court.

3596. Would you upon the whole recommend the severance of the investigation of the title from the distribution of the proceeds of the sale?—I am entirely averse to that.

3597. You would still retain the investigation of the title and the distribution of the proceeds of the sale in the same hands?—Clearly. I would start the new court with the new business. I do not imagine that our recommendations could have effect at all, unless they went hand-in-hand.

3598. It has been suggested that a modification should be proposed; that the Masters shall be retained, and that they shall have an extension of the power which they now exercise under the 15th section of Sir John Romilly's Act, converting them really into Vice-chancellors; and that there shall be two Title Masters, to whom questions of title apart from other judicial business shall be transferred; do you approve of that suggestion?—I have the greatest possible objection to it.

3599. Will you state your objection?—I consider that nothing is so necessary for the security of property as that the very highest persons, both in station and prestige, shall be appointed to investigate the titles.

3600. I do not know whether English authorities have weight with you, but in the Court of Chancery in England the question of title is transferred by the Judges in each case to conveyancers who are on a roster?—They do not give a Parliamentary title. That is my answer.

3601. If a Parliamentary title is to be given, you would think it of the first importance that the investigation of the title and the distribution of the proceeds should be in the hands of the Judge, exercising supreme authority?—I think that, for the facility of business, it is indispensable, but only for facilitating business. What I mean is this, that the highest judicial sanction that I can get, apart from the Lord Chancellor, I desire to have for the investigation of the title. In other words, I cannot imagine that there will be any security unless the Judges take it upon themselves, and take it exclusively upon themselves. I go that whole length. In considering this question I have always proceeded upon the assumption that the highest legal ability that could be obtained, and which only could be obtained by giving high station along with it, should be applied to that very purpose.

3602. The Masters, who are men of eminence and high station, have been selected with a view to the transaction of other business; would it be quite safe to transfer to them business of this peculiar character, including the investigation of title as well as other duties?—I would not give the Masters the investigation of title.

3603. You are not prepared to recommend the transfer to the existing Masters of

of judicial authority, including the investigation of title as well as the distribution of the proceeds of the sale amongst the parties?—You must understand that I am speaking of the Master in reference to his office, and not in reference to any individual who may fill the office. If those in whom the authority is vested choose to say that one of the present Masters is a man who ought to be a Vice-Chancellor, I am content. I offer no opinion about any man; I merely speak to the office. My notion is that the country expects, and nothing else will satisfy it, that nearly the highest judicial functionary that can be got shall be the person to investigate titles which are to be Parliamentary titles.

3604. Will one Vice-Chancellor be able to perform that duty?—No.

3605. Do you still adhere to your opinion that there should be two Vice-Chancellors?—Yes. The Masters, according to their present functions, are perfectly competent; everybody who knows them knows that they could not be more competent for every function that they discharge. They are as competent as any Commissioner you can name to adjudicate upon the rights of the several parties to the funds realised.

3606. With respect to the investigation of title, it is a new business to the Master, which you would not transfer to him?—It is not new. I know that practically two, if not three of the Masters, have had very great experience, as much as any others. They have had constant investigation of title in the whole course of their business; but still I would not give the duty to them because it requires a higher sanction.

3607. If they are accustomed to investigate titles, and if they are constantly accustomed to distribute the proceeds of the sales according to the rules of the Court of Chancery, what other functions could Vice-Chancellors perform which the Masters are not fit to perform?—I admit that quite; but I do not believe that the public in Ireland would be satisfied.

3608. Would you recommend that both the Vice-Chancellors should be appointed for the performance of new work to be brought into the court, and that the arrear should be distributed amongst the existing Masters?—Whenever the title has not been investigated, I would not transfer to them the arrears of selling estates.

3609. *Chairman.*] You would give the Masters the arrears subsequently to sale?—Yes.

3610. Sir *J. Graham.*] I presume you would leave the distribution of the arrears amongst the Masters to the Lord Chancellor?—I would. I can state what my own impression was. I had some responsibility when that report was signed, and it was greatly in reference to financial difficulties that some of the recommendations were made, and not in reference to what we would have done if we could have had money at pleasure.

3611. The administration of justice being paramount to all other considerations, are the alterations which you would make according to your recommendations for the sake of justice?—For the sake of expedition; the only danger is of greater delay than there is in the Incumbered Estates Court; they are completely clogged.

3612. To put an end to that clogging, with a view to justice, pecuniary considerations being secondary, what would you recommend?—It is only to go on adding Vice-Chancellors, and you would work off the business; but the difficulty is, when you create an office, how you are to lay it down again.

3613. The Master of the Rolls being appointed prior to the change, if he was reluctant to undertake the investigation of title, that would be an impediment, would it not?—I do not think he ought to be asked to do so at all. The Commissioners, in considering that question, made up their minds that he ought not to be asked.

3614. *Chairman.*] The Commissioners thought that it ought to be left optional to him?—Yes; if he thought proper to do it he might; it would be unjust to him to require him to do it.

3615. Sir *J. Graham.*] Under any circumstances, the compensation to the Masters, following the example of England, will be their full salaries, will it not?—Yes, that must be, because they are patent officers.

3616. If they retain their full salaries, being competent to the work you would impose upon them, under the powers to be reserved to the Lord Chancellor, the distributing of the arrears in the Incumbered Estates Court would be worked up by them?—That is my reason for it; because if you relieve them from their duties you must pay them, at all events; and therefore I think myself, inasmuch as when

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it is worked out they will retire so far from retarding the business, I should say that it would rather have a tendency to expedite it.

3617. Mr. *Whiteside.*] If the Masters are capable of winding-up all the arrears arising out of the sale of 18,000,000*l.* worth of property in the Incumbered Estates Court, how would they be incompetent to transact the future business of a like nature?—I did not say that they would; but my notion is that every case that comes into the Court of Chancery should be worked out by the same Judge, and that no case should ever go into the hands of two Judges. I think you will find that it will be impossible that a Master, unless he be the person to decide upon the title, can be the person to execute the rest of the work.

3618. When I used the word "Master," I meant by it the officer discharging all the duties which you have defined for this gentleman. You have, according to your modified plan, suggested that the Masters would be fit to have the sale of 18,000,000 *l.* worth of property, why would they, or some of them, in the character or capacity of Vice-Chancellors, not be competent to transact the future business of the court?—I have endeavoured to exclude in my evidence personal references altogether. In the evidence which I have given I most distinctly desire not to be understood as speaking of the fitness of the Masters as persons. I am speaking of the system solely as a system. To put it in the most distinct way, in the first place, no answer of mine pointed to the Master selling property at all; I have distinctly excluded that. My answers point to distributing the proceeds of sale; therefore it is incompatible with the view which I take, be it right or wrong, that the Master should be continued for the purpose. I do not think the public will be satisfied with that. If you make the same man a Vice-Chancellor, the public may be satisfied with him; I offer no opinion at all about persons.

3619. Is not this the effect of your evidence, that if 18,000,000 *l.* worth of of property were sold in the Incumbered Estates Court, these gentlemen would be competent to ascertain the priorities, and settle the rights of the claimants to that 18,000,000 *l.*?—I think they would, subject to the right of appeal.

3620. On what principle, whether you call them Masters or Vice-Chancellors, should they not be competent or qualified to do the like duties for the future, if there were other property to be sold in Chancery?—They would be competent to distribute any other fund; but my system supposes that the person to distribute the fund shall be the person to make the sale; and it is obvious that the two cases are not analogous.

3621. I understand your evidence to be according to the modified plan, which is not in exact conformity with the report, that the present Masters, if they could get the proceeds of the sales to be made in the Incumbered Estates Court, could be properly called upon to discharge the important duties of distributing that large sum of money?—I think so.

3622. Would they not be equally competent to distribute the proceeds of other sales that might occur afterwards?—Yes.

3623. In point of fact, three of the Masters have had great experience in selling and making titles to estates during their past official lives, have they not?—I think not in the sense in which I understand the making of a title now.

3624. Under the old system they have, although not making a Parliamentary title?—No, nor making any title.

3625. Did not they investigate questions of title, and hear counsel argue upon them?—They did; and if property to be sold under the new system was in every case made the subject of discussion by a competent Bar, there would be no difficulty about it, as I understand, in the system to be now inaugurated, the person who is to decide upon the title will have no assistance whatever; he will have to read the title and to make up his own mind upon it; there will be no contention before him, with the view of giving assistance to him to arrive at any conclusion upon it. I believe I am giving the opinion of others, as well as of myself, who were associated with me in the Commission, and that was our difficulty.

3626. Would you not give to those officers or Judges who have the power to sell an estate affecting the rights of families liberty to get legal assistance before them, in case difficulties presented themselves to their minds which required to be investigated?—To be sure I would.

3627. And in case of the rights of minors, or absent parties?—I would give them that power.

3628. Sir *E. Perry.*] With respect to the Title Masters, you have expressed a strong

a strong opinion as to the inexpediency of having Title Masters who shall investigate the titles; as I understand you hold that, for that duty, the highest amount of prestige is required?—Yes.

3629. I gather from your report that you are very well satisfied with the mode in which the present Commissioners have discharged their duties?—So far as I know.

3630. The evidence seems to be conclusive upon that point?—Yes, so far as I know.

3631. If such gentlemen were made Title Masters, would not a satisfactory result be obtained?—I should be very well satisfied, but I am not quite so sure that the public in Ireland would be as well satisfied.

3632. The evidence we have received, and the evidence before you in Ireland, seem to be unanimous upon the point as to the satisfactory condition of the Incumbered Estates Court?—I have a very strong opinion that the Incumbered Estates Commissioners have discharged their duties with great ability.

3633. Have not the appeals from their decisions been very few?—I do not think that is any test at all; the great mass of business in the Incumbered Estates Court, and the great mass of business in the court that you would inaugurate, would be mere routine work; it will work off itself; there will be no difficulty about it; it is only rarely that difficult questions arise, but when difficult questions arise, then it is that you may expect an appeal.

3634. Do not you think, that in the safe working of this system, it is most expedient that a great amount of scientific knowledge should be applied to the investigation of titles?—The highest possible amount.

3635. We have it in evidence that great equity lawyers do not often possess a great knowledge of conveyancing?—I do not like to refer to the evidence which has been given before the Committee, but I totally and entirely dissent from it; I would rather have the opinion of a great equity lawyer than the opinion of half the conveyancers in England.

3636. Therefore your opinion is, that to carry out the principle of a Parliamentary title, the highest Judges that you can appoint should have that duty imposed upon them?—That is my opinion; I think I may say this without any difference of opinion; I recollect during a very great part of my life, there was not a day of it in which I had not a title before me; and I take it that if I had any organ of conscientiousness, it was quite as strong in advising upon that title as if I was made a Judge; the responsibility is so great, that no earthly inducement would make me execute the duties of the office which I recommend to be created; I speak as an individual; nevertheless, as a barrister, I have been doing it all my life.

3637. Sir *J. Graham.*] With your large knowledge of the Bar of Ireland, are there not many gentlemen at this moment in practice who are quite competent to deal with questions of title?—A great many; I know a gentleman that I think it would be the greatest benefit ever conferred upon Ireland if he was placed in the position.

3638. Sir *E. Perry.*] Is it not the case that great equity lawyers in England have little knowledge of conveyancing?—I think so, but I do not think it is the case in Ireland; in Ireland the course is almost the same for everybody. A barrister begins his career as a common-law lawyer, and during the time that he is at the common-law bar, he has more or less, according to good fortune, of conveyancing business; but when he comes into the Court of Chancery he will then have conveyancing business to an enormous extent. I doubt if there is any man who ever lived who has had more conveyancing business than Mr. Blackburne, with perhaps the exception of Mr. Sawden, who was a very great equity lawyer. His opinions upon title are brought forward every day in our courts, and we all look upon them with admiration.

3639. I may take your general evidence to be that Irish practitioners of eminence are all tolerable conveyancers?—Some are most eminent, and in the habit of investigating title.

3640. Sir *J. Graham.*] The sub-division of labour which has taken place in England from the accumulation of business has led to a separate class of conveyancers; there being no such accumulation in Ireland, the division has never taken place; but conveyancing has formed part of the business of practitioners in court: has the result of that practice led, on the part of able men, to perfect competency in the investigation of title?—That is my thorough belief.

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3641. Distributed amongst many leaders of the bar?—Yes, I should say so.

3642. *Chairman.*] Have not the leaders in Chancery a great deal of business in advising on titles and conveyancing?—Not since the Incumbered Estates Court was established; since the Incumbered Estates Court has been in operation, it has been the great conveyancer; but before the Incumbered Estate Court, the greatest portion of their business in fact was that.

3643. Sir *E. Perry.*] Supposing that the bar of Ireland affords a sufficient number of practitioners to take the office of Vice-Chancellors, with the duty of investigating titles, have you considered the effect of such a class of business coming before them, in addition to the transaction of equity business?—Yes.

3644. How will it operate?—I think it will impose on them intense labour and great responsibility.

3645. According to the evidence given by the Commissioners, the time occupied in investigating titles is generally the greater part of the working day?—I do not think that we asked any questions upon that subject.

3646. Is not the investigation of title a work requiring great attention, a long time, and the best exhibition of the faculties that can be offered to it?—That is true. So far as I know anything about the Bar of Ireland, and I have known it for 35 years, I have always found that the men with the greatest amount of court business have the most extensive conveyancing business.

3647. Taking the case of the Vice-Chancellor having to investigate titles, and hear the ordinary suits brought before him, at what period of the day would he be likely to read his abstracts?—I should suppose that the present Master of the Rolls and the Lord Chancellor are able to do the business, and to do it with comparative ease; and there substantially is never any arrear but what is desired by the Bar, and that is a very small one. The Master of the Rolls never has any arrear, and the Lord Chancellor has an arrear of a few causes, which is always at the instance of the Bar, who desire to have three or four, or five or ten old causes to stand over till the next term, having the vacation to prepare themselves. If they are able to do the business now, there will not be such an influx. I think a good portion of the chancery practice is one officer making business for another; that is my opinion. For example, a case comes before the Lord Chancellor or the Master of the Rolls, and the Master of the Rolls makes a reference to the Master; that, in my opinion, is so much time thrown away. Then the Master makes a report; then there are what are called objections and exceptions taken to that report; and all that comes back to the Master of the Rolls, and is re-discussed before him. That is, in my judgment, all a waste of time and of money; whereas if the Master of the Rolls, when a case went before him, sat at it, he would get rid of it very often in five minutes. I calculate upon a most extraordinary saving of the time of our present functionaries. You are making two new ones, and the result I should hope will be this: you are getting rid of the Masters, and I am opinion that, if proper clerks are appointed for the Vice-Chancellors, the business will go at a very great rate. With the court business, I do not suppose that the Vice-Chancellor would ever read titles in court.

3648. Do you think the Vice-Chancellor would sit in court from 10 o'clock and hear the counsel in different suits, and at the close of the day read abstracts of title?—I think very likely he would read the titles in the vacation; he never would read one during term; when the term was over he would get rid of his abstracts, as a counsel does. I am much more occupied than any Judge, except the Master of the Rolls, whose attention is constantly kept on the stretch; I have to prepare myself to argue cases, having a considerable business, and I have also to work upon titles.

3649. Will not the Vice-Chancellor have to write his judgments upon any cases after term?—That would depend upon whether he writes his judgments.

3650. Practically, reading the abstracts would be postponed to the court business?—I think it would be done in the vacation.

3651. Sir *J. Graham.*] When you say that proper clerks are necessary, you know the Castle; do you think that proper clerks would be appointed to the Vice-Chancellors by the Castle?—My opinion is entirely against it.

3652. Have you seen the Attorney-general's Bill?—I have.

3653. Have you seen the provisions with respect to the appointment of clerks to the Vice-Chancellors?—Yes.

3654. Do you approve of them?—No; it was a subject which we considered most

most carefully in the Rolls House here, and we considered it also in Ireland, and the Commission was unanimous upon it.

3655. *Chairman.*] From the peculiar relation between the Judge and his chief clerk, the Commissioners were of opinion that he ought to have the appointment?—I would not have signed that report if that recommendation had not been in it, and I am able to answer for Mr. Blackburne that he would not.

3656. Are you able to suggest any veto which could be imposed upon the Judge, so as to ensure that the power to appoint was not abused?—I have the greatest possible objection to distrust those who are placed in high offices; I cannot bear the thought of any proceeding being taken by Act of Parliament to make Judges honest.

3657. Mr. *Whiteside.*] Would it not increase the dissatisfaction to give the power to the Judges in England, and not to give it to the Judges in Ireland?—Our recommendation was based upon the Act of Parliament in England, and follows it exactly.

3658. Sir *J. Graham.*] You attach great importance to the Vice-Chancellors, if appointed, having efficient chief clerks, the Masters being abolished?—Every word I have said, my whole evidence, and any portion of labour that I bestowed upon that report, went entirely upon the assumption of unity of purpose between the clerk and the Vice-Chancellor, and the selection of a man who would work with the Vice-Chancellor, with something more than a mere sense of duty.

3659. I think Lord Bacon said somewhere, that a clerk skilful in precedent, wary in proceeding, and accustomed to the business of the court, is a finger-post to the Judge, and often directs him in the right course; do you assent to that dictum of Lord Bacon's?—Most entirely; I could give instances of it, and name persons that I have seen possessed of all those qualifications.

3660. Do you think a finger-post erected by the Lord Lieutenant would be a sure guide to the judge?—My answer must be irrespective of any particular Lord Lieutenant. If I were in the office which I have felt it my duty to resign, my belief is, that it would be next to impossible for me to recommend to the Lord Lieutenant such a man as ought to be appointed.

3661. According to your views, the interfence with respect to patronage disturbs the whole of the proposed arrangement?—Certainly; I think so.

3662. Would you have signed the report, if the provision in the Bill which is now before the Committee had been a recommendation in the report?—I would not. I may add further that, independently of the very strong opinion (perhaps too strong) which I have expressed, and I would not be honest if I did not express it, I have another feeling, which is this: so far as I am concerned, I never will take part in anything in which a difference is made between England and Ireland. I have the strongest opinion that we ought to have the same law; there is no difference between us; it is of vast importance to Ireland, in my judgment, that there should be no distinction in the legislation between the two countries.

3663. *Chairman.*] You have pointed out certain reasons why you would not approve of what are called Title Masters; would not there be this additional evil, that you would have a complete split in the business, one portion being done by one Judge, and another portion by another?—Yes; and it would be entirely inconsistent with the recommendations of the report, in my opinion.

3664. Would it not be an evil, when a cause came into court, to transfer the investigation of the title to the Title Master, and then bring the case back again for the distribution of the proceeds of the sale?—Yes; I will endeavour to explain my view; I will suppose that I were discharging the duties of a Vice-Chancellor. If I were to incur the responsibility of making out a sale order, I should read every word of the title. I would then have present, to my own mind, every right connected with the distribution of the money, and I would have nothing to do but to distribute the money without labour or trouble. If I sent the case to another person, he would have to go through the whole thing over again.

3665. Sir *E. Perry.*] If the title is referred to the Title Master, and there are questions necessary to the distribution of the funds, why should not he distribute the funds?—If he is to do, that I do not see what you want with Vice-Chancellors.

3666. *Chairman.*] Would not it bring into his office four-fifths of the business connected with the sale of estates, and the administration of all the equities arising upon the distribution of the proceeds; every case for raising an incum-

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brance or forcing a debt would go into his office?—Yes, with the exception of those cases I pointed out some time ago of the highest class, namely, specific execution of contracts and instruments, in which you do not require any further investigation, construing cases in which relief is granted or the Bill dismissed; all those are cases which I suppose the Chancellor would naturally take.

3667. In your evidence you have been speaking of the office of Master, and not of the individual who filled the office?—No; if I felt myself at liberty, I should like to express my sense of the ability of some of the Masters; perhaps, I should say all. It must be understood that I am not speaking of any man; but if I were speaking of particular persons, I think I could show that all the Masters are most competent persons.

3668. In the recommendations of the report, which the Bill is framed to carry out, it is left perfectly open to the Executive to make the Masters Vice-Chancellors?—Yes.

3669. Nothing you have said is intended to convey anything inconsistent with that?—Certainly not.

3670. In suggesting that we should make use of available assistance in reference to the arrears of the Incumbered Estates Court, you speak of the Masters as the readiest means of combating the evils that exist in that arrear?—Yes; you are in a difficulty; you have an amount of arrear; you have officers who are fully competent to assist you, and you are paying them. The question is, whether you shall pay them for doing that work, or pay them for doing nothing.

3671. They are performing cognate duties at the present moment, and doing them satisfactorily?—They are.

3672. Whether you took one or more, you would still have an available remaining strength to deal with the arrear?—Yes.

3673. In reference to this report, I believe you are aware that in framing the report, the Commissioners made use not alone of the evidence, but of the knowledge and experience of each other in regard to the subject matter under inquiry?—Most certainly. I believe there never was a body of men who worked so entirely harmoniously; there was a variety of knowledge as great as I ever saw brought together before.

3674. The report does not depend upon the mere written evidence in the Appendix, but upon the great experience and knowledge of the Commissioners themselves?—My belief is that it rests much more upon the latter than upon the former.

3675. Sir *J. Graham.*] You have mentioned two points in which you would wish to correct the recommendations in the report?—Yes.

3676. It has appeared before the Committee that in a report with reference to receivers which you may remember, in consequence of a suggestion of Lord St. Leonards, there was a limitation of the debt within which no receiver should be appointed, that sum being 150 *l.*?—Yes.

3677. Subsequent legislation has given facilities for converting judgments into mortgages, and it has been represented to the Committee that that legislation has interfered with the check suggested by Lord St. Leonards, and has led to the recurrence of the evil of the appointment of a large number of receivers; have you formed any opinion upon that subject?—Yes, I think that law, intended to assimilate the law of Ireland to that of England, has introduced the practice of turning judgments into mortgages to the great prejudice of the public interest.

3678. You object to that extension?—I do; the history of legislation upon the subject has been curious; Sir Michael O'Loughlin brought in the first Receiver Act, and it was considered as great a boon as was ever conferred upon the country; it shows how things go on in Ireland; I think it was that which superseded a system the most mischievous which ever existed, by which almost all the incumbered property in Ireland was under what was called a custodian; a Crown process was issued, and the property was taken nominally into the possession of the Crown. It was granted to the creditor at a rent of 5 *l.* a year, and that led to the most oppressive system that ever was conceived, and to the greatest amount of litigation. The creditor was bound to account in the Court of Exchequer for the full value, although he had a lease at 5 *l.* a year, and Sir Michael O'Loughlin having great experience and seeing the evils, corrected them by substituting receivers. That came to be a very great abuse, because for every little debt, if a man recovered 10 *l.*, a professional man got those 10 *l.*, and he appointed a receiver, which cost 30 *l.* or 40 *l.* Then came the law, which limited the

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the right to appoint receivers to 150 *l.*, and then came the last Act of Parliament, which, containing many most wise and good provisions, contained that one turning all judgments into mortgages. I do not know whether the Committee is aware that there is an old Act of Parliament about the year 1773, which entitles any mortgagee, when three half years' interest is due to him, to apply for a receiver as a matter of right, and a receiver is appointed; when that interest is paid he drops; it gets in arrear again; he is re-appointed, and so goes on.

3679. You would recommend a revision of that clause?—Certainly. I do not go into a number of difficulties that occur to my own mind, in regard to the existence of that clause, of a kind that have not yet occurred, but I apprehend hereafter there will be found very serious difficulties in regard to rights.

3680. We have heard that property to the amount of 18,000,000 *l.* has been sold in the Incumbered Estates Court during the last nine years; we have also been told that there are still 1,500 receivers in Ireland; how do you account for so great an anomaly, that so large a sale of incumbered property should not have much more reduced the number of receivers?—It is a very difficult question indeed. I am afraid, unless you can prevent Irishmen getting into debt, you will have a great number of receivers, or unless you make it illegal to have receivers. It is a great evil, and how it is to be got rid of passes my comprehension.

3681. You consider that the appointment of receivers is a great curse to the country?—Yes.

3682. And the evil of incumbered property is very partially redressed if the number of receivers remains so large?—That is so to a certain extent. I have no means of forming a judgment, but I suppose it would be very easy for the Committee to get a return of the entire income of property under receivers. I suppose a man would tot it up in half a day, because all the receivers' accounts are filed in one of the offices of the Court of Chancery. If there are 1,100, that would be 1,100 series of figures to be added together. All the receivers' accounts contain the annual rental, so that you would merely have to put 1,100 sets of figures together.

3683. I understood you to say in effect that the sales in the Incumbered Estates Court covered the larger portion of the property deeply incumbered in Ireland?—That is my impression.

3684. Would not it follow from that that receivers are appointed when the incumbrances are comparatively light?—Or that the estates are very small. I have seen receivers appointed over 20 *l.* a year. You would be startled to see the amounts of the incomes over which receivers are appointed. A good many of those receivers are the dregs of the Incumbered Estates Court sales. I can make no guess at the number, but I believe I was the person who advised a petition for a receiver pending the proceedings in the Incumbered Estates Court, and I believe moved for the first one myself. A considerable number have been a compliment to the Incumbered Estates Court, that is, they have been appointed because the property was put into the Incumbered Estates Court.

3685. With your large practice, have you not been aware of abuse from the double operation of estates being put into the Incumbered Estates Court for sale and counteracted by receivers appointed by the Court of Chancery?—They are not counteracted.

3686. Are not both courts simultaneously acting upon the unhappy estate?—I am not aware that that is a mischief. Having a receiver at all is a mischief, but it is no greater mischief than in any other case, because the Incumbered Estates Court does not attach the rents, at the same time that it proceeds to consider whether it will sell the estate, and they either go into the pocket of the owner or into the pocket of some incumbrancer who is in possession. If they are going into the pocket of the owner some creditor files a petition in the Court of Chancery to take them out of his hand. Now the delays have become very considerable. In many cases, I dare say, if you had a list of all you would find that some property is a long time in the Incumbered Estates Court. A receiver is appointed and collects the rents during the time the Incumbered Estates Court is endeavouring to work out its proceedings and as soon as the sale takes place the first thing is to discharge the receiver.

3687. Mr. *De Vere.*] Is not a receiver frequently appointed pending a sale in the Incumbered Estates Court to secure the regular payment of interest?—It is every day's practice.

3688. *Chairman.*] If that is not done the creditor would lose the income of the

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estate whilst the proceedings were going on in the Incumbered Estates Court?—Yes; and I think a good many would lose their lives, because they would have nothing to live upon.

3689. Assuming that to be the practice, the appointing a receiver pending the sale in the Incumbered Estates Court, is there any other remedy than expediting the sale?—Supposing new legislation, and a new code, the Court of Chancery will act simultaneously in reference to the receivers and the sale. The Court of Chancery will be able to act in whatever may be considered desirable for the benefit of the property. If anybody could suggest a mode of selling the property the day it was submitted to any tribunal, the evil would be got rid of; but you cannot venture to do that until you are sure that you have a title to sell.

3690. The true remedy would be, devising some means by which the estate could be sold at the earliest opportunity?—I believe that is the case in the Incumbered Estates Court; I believe that to be its first great benefit; but it has been overpowered with work. At first there was no difficulty, because when the Court commenced it had a clean board; most of the business was done to its hand, and it had merely to sell. The Incumbered Estates Commissioners had chalked out for them the application of every farthing of the money.

3691. Sir *J. Graham.*] Are you of opinion that the absence of the bar in the Incumbered Estates Court has been an evil?—It is impossible to estimate it highly enough; that has done more to create dissatisfaction than anything else.

3692. You said that there was always a mixture of good and evil, would not the transfer of the Incumbered Estates Court to the Court of Chancery remedy the evil of the absence of the Bar, and lead, on the other hand, to expense and delay?—I think it is probable it might; but I do not think there would be more expense, because there is a Bar at the Incumbered Estates Court, but it is not the Bar. The business is not done in the presence of an assembly of men who are the greatest check, I believe, upon the administration of justice.

3693. Time is necessary, is it not, before the fruit of the administration of justice, such as it is or has been in the Incumbered Estates Court will be ascertained. Time only can show what injustice may have been done to remaindermen and contingent interests?—Most unquestionably

3694. That is not yet ascertained?—No, that is the qualm one has about the whole concern.

3695. Its first appearance is more satisfactory than its ultimate effect may prove, as far as justice is concerned?—It is impossible to say how that is; the only test I can try it by is this; take the case of a man largely engaged in investigating titles committing numerous mistakes, they will not be discovered in his lifetime in all probability. He has that satisfaction, he will escape.

3696. On the other hand the advantage of a Parliamentary title, whatever it may be, will be counteracted in time by new incumbrances which begin to accrue upon the Parliamentary title?—To be sure it will; the Registry Act in Ireland shows the incumbrances; it is a fresh beginning, and every time an estate comes back, if you pass an Act of Parliament, you will enable everybody to get a new start.

3697. You have mentioned three great epochs of roots of title; there will be this fourth, and in the lapse of time these evils will recur?—If this Bill passes, I dare say every two or three generations estates will come back to the court.

3698. *Toties quoties*, a Parliamentary title?—And a very good thing it will be.

3699. Mr. *Henley.*] You have stated that it seldom takes less than twelve months to investigate a title on account of the length of time which is necessary to go back to the respective roots; what is the time occupied in the Incumbered Estates Court in the investigation of titles?—I cannot tell; it is all done in private by the Commissioners. As I understood from Mr. Longfield, when he was so good as to give us the most candid information, the mode of procedure is this: A statement of title is brought into Court, and that is taken by one Commissioner; and along with the statement of title, there is an account of the incumbrances affecting the estate also brought, called the Schedule of Incumbrances; and the Commissioner, when he has time to devote himself to it, examines the title, and he finds that which counsel investigating title almost invariably finds, that the abstract is a defective abstract; and then he is forced to send it back, to have it made as correct as can be. It comes to him again, and

upon

upon investigation, in consequence of the fullest inquiry, he points out other difficulties; it goes back again; and that process is continued, until the counsel investigating it, or the Commissioner investigating it, is satisfied that he has got a substantially good title.

3700. I understood you to say that 12 months was a short time for a counsel to investigate a heavy title in Ireland?—I did not mean to say that the counsel kept it 12 months before he gave his opinion. What I meant to say was, that it was sent back to the parties, and came back to him, and then there came the searches.

3701. The matter was not completed for sale in less than 12 months?—Yes.

3702. You said sometimes that it took two or three years, and that 12 months was the shortest period?—I do not think I said the shortest.

3703. What difference is there in the time occupied in the investigation of a title in the Incumbered Estates Court, and the investigation of title before counsel?—It would appear to me that there would be very little, except in cases that went from the Court of Chancery.

3704. We are hardly to understand that the estates that were sold in the first two or three years could have received anything like 12 months' investigation of title?—They did not, because most of them that went in went from the Court of Chancery, and going from the Court of Chancery, the title of necessity must have been to some extent investigated.

3705. A great deal was cleared up, before it got there?—Nearly the whole work was done; according to the practice of the Court of Chancery, every person whatever having an interest in an estate which is to be sold in that court must be brought before the court; every single person, either an incumbrancer or person having an estate, formerly was brought before the court and made a party; it led to enormous delays; now a different plan is adopted, a much better one; still he is before the court. Then the Court of Chancery, having the whole title before it, sends the case into the office, and proceeds to ascertain the rights of everybody, and it came back on the report. The Commissioners of the Incumbered Estates Court began with a transfer of every case in Chancery at one fell swoop to them; they had very great security that they had a good title before them; they did, I have no doubt, make such further investigation as would have been made in the Court of Chancery if the sale had taken place there.

3706. It would be right to assume they went up to the same roots as was ordinarily done?—No; the great distinction is this. If I, as counsel, were investigating a title, I would get in every term of years, every outstanding legal estate back to the root of the title. When the Incumbered Estate Court came to sell, I believe in most instances they have not done so; they do not think it necessary, because, having the power of giving a Parliamentary title, they have not the least apprehension that an outstanding legal estate could defeat the title they were giving. If they got a person entitled to the money they were perfectly content, but no counsel would be content unless he got the whole perfect legal estate in; they went simply to the equities without dealing with the legal rights; it is the getting in of the legal estates that makes the great delay in titles before conveyancers.

3707. Has the practice been amended in that respect in England?—There has been a law passed about terms of years. There is a class of cases, beginning with the case of Young *v.* Lord Waterpark, which I am disposed to think corrected an opinion, the general Statute of Limitations, the 3d & 4th of William the 4th, operated in cases in which it has been held not to operate by reason of outstanding terms created for direct trusts, so that properties have been recovered. I have been counsel in two or three cases in Ireland in which properties have been recovered after 30 years of what was supposed to be adverse possession.

3708. Does not the statement which you have made about the bulk of incumbered land having already passed through the Incumbered Estates Court in Ireland only apply to unsettled property?—Certainly.

3709. Have you formed any opinion as to what amount of property may be incumbered in Ireland that has not passed through the court?—I have not the most remote conception. You have the amount that has passed through the court, from the highest authority. I take for granted that there are public records that will show pretty nearly the rental of Ireland. There is Mr. Griffith's Valuation.

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3710. That will not show what is settled and what is unsettled?—It is impossible; no one can show that settled property did not go into the Incumbered Estates Court where the fee-simple was incumbered prior to the settlement.

3711. You have stated in your evidence that you thought the bulk of incumbered property had already passed through the court?—I meant property capable of being sold, because I assume that no settled property can be sold.

3712. I want to ascertain what you meant by the word "bulk," whether one-half or two-thirds?—I should say a much larger quantity either has gone through, or could go through.

3713. Of the unsettled property, which alone I can deal with, when you use the term "bulk," do you mean two-thirds, or what would be the proportion?—I cannot give any approximation to it.

3714. You have stated that, in your judgment, the opinion of an equity Judge would be safer than that of a conveyancer?—I would rather have his opinion I would rather have Lord Eldon's opinion, or Lord St. Leonards' opinion, or Mr. Blackburne's opinion, than the opinion of any conveyancer in England.

3715. Do you think the Judge's opinion would be safer from his own inspection than upon evidence?—Yes.

3716. You would prefer sight to evidence?—I can understand a practitioner in a court of equity, that is, a man who being conversant with the old rules of the court, transacts a great deal of most profitable and lucrative business, and yet knowing very little about the law of real property; but to say that a man can be an equity barrister in the Court of Chancery, and keep his place there for one year, and yet not be familiar with the law of real property, passes my comprehension altogether.

3717. You have stated that the Vice-Chancellors, if they are appointed, would do the conveyancing portion of their business in the vacation?—I suppose so.

3718. Do you think that it would be satisfactory to have that sort of recreation assigned to a Judge in the vacation?—So little satisfactory, that I should be very sorry to undertake the office.

3719. At present a Judge receives a salary for working a certain time, and is allowed certain vacations; do you think it would be agreeable to him to have to investigate titles in the vacation?—I think not.

3720. Do you think the Judge's mind would bear the strain without recreation?—All I have to say is this: Mr. Blackburne spent 30 years in practice, and always made more money in the long vacation than in the term.

3721. Mr. Blackburne was a gentleman, who, being in high practice, received good fees for all the work he did in the vacation?—I do not think myself that the extent of the labour would be so great as is contemplated.

3722. Is there any reason why a Judge's mind should not stand the labour as well as a barrister's?—I think it ought to stand it better; I will answer that by proof. Look at the Bench, and you will see whether it stands it better or not.

3723. Mr. *De Vere.*] Supposing it was necessary that the Judges should do some portion of their duties during the vacation, would there be any difficulty in finding competent persons to accept the situation?—I cannot help, when such a question is put, passing in review in my mind, persons I know at the Irish Bar. I know persons at the Irish Bar, who I cannot but believe would accept the office, and to whom it would be a great relaxation.

3724. *Chairman.*] Persons who would be fully competent to perform the duties of this office?—Yes; I know a man; I wish I could think as highly of myself as of him; who I hope would take the office.

3725. Upon the subject of the Receivers and Mortgage Act of 1773, which has been alluded to, would you approve of the total repeal of that Act? You said in your evidence that it ought to be considered?—I would not repeal it; I do not think there are ten receivers under it.

Martis, 20° die Maii, 1856.

MEMBERS PRESENT.

Mr. Attorney-general for Ireland.	Mr. De Vere.
Mr. William Fitzgerald.	Sir James Graham.
Mr. Henley.	Mr. Henry Herbert.
Mr. Macartney.	Viscount Monck.
Sir Erskine Perry.	Mr. Whiteside.

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

The Right Honourable *Abraham Brewster* further Examined.

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3726. Sir *J. Graham.*] IN the Court of Chancery before an estate is sold is it not the invariable practice, based upon views of equity, that before the realty shall be touched the personal property shall be exhausted?—No, it is not.

3727. Is there no rule upon that subject?—There is.

3728. What is the rule?—The rule is, that the creditor is not bound to wait for the realisation of the personal estate.

3729. Is that the practice in the Incumbered Estates Court?—They have no jurisdiction at all as to personalty; they never inquire as to it.

2730. Therefore, when a debt is established in the Incumbered Estates Court, the remedy is against the realty without any previous inquiry?—Just so. For fear I may be misunderstood, the rule in Chancery is this: the theory is, that the personalty shall be all exhausted first, and that you shall not go to the realty until the personalty is exhausted; if there be any delay in winding up the personalty the creditor is not to wait; he has a right to sell the realty without waiting for the realisation of the personal estate. I assume that you put to me the case where the debt is a common debt upon the two funds.

3731. A large portion of debt is of that character?—I would say that most debts are of that description.

3732. When you and your brother Commissioners recommended the transfer of the jurisdiction of the Incumbered Estates Court to the Court of Chancery, and the merger of that jurisdiction in Chancery, did you or not contemplate an adherence to the existing rule of the Court of Chancery with reference to the exhaustion of the personalty before you proceeded against the realty as it now exists?—In reference to that, I do not think we entered into the consideration of it at all; I do not think it was once suggested in the progress of our inquiries.

3733. Is it not an important question?—Certainly. I take it that what is to be done, if anything is done, in pursuance of our recommendation, will amount to a reconstruction of the Court of Chancery; it appears to me whoever is to execute the law, whatever law shall be passed, ought to provide by general rules, as far as safely can be done, for the immediate sale of the realty; which is quite compatible, I think, with an alteration of the law.

3734. When you say the reconstruction of the Court of Chancery, do you mean a legislative reconstruction, or enlarged powers in making rules?—I think what we had in our view was, that the Court of Chancery would be so much changed, by the law to be made in conformity with our recommendation, that it would in fact amount to a reconstruction.

3735. Was it to be legislative entirely, or partly legislative and partly operative, by rule?—I consider that all the great principles should be laid down by legislation, and all the details worked out by rules; I may explain that there is this difficulty, unless an express provision be made by Act of Parliament, authorising the making rules, a judge sitting in any court would say, I cannot make a rule in contravention of the Act of Parliament.

3736. Though not in contravention of an Act of Parliament, does not a large power exist of making rules within the limits of the law?—Yes; if large powers be given of making rules, I should say the Court of Chancery would fall short of what I expect from it, if it did not make rules to meet the case you are putting to me.

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3737. Lord St. Leonards largely exercised the power of making rules, did not he?—Yes.

3738. And in the most salutary manner?—Yes; he and Mr. Blackburn completely remodelled the Court of Chancery by those rules.

3739. Still, if the merger of the Incumbered Estates Court should take place, further reconstruction and reconsideration would be necessary?—If our recommendations were carried out, a very great number of important changes ought to be made a rule.

3740. To whom ought that power of making rules to be confided; to the Lord Chancellor, or to the Lord Chancellor and the Master of the Rolls together?—To neither. We were of opinion that it should be given to the majority of the Court; that is, to the Lord Chancellor, the Master of the Rolls, and the two Vice-Chancellors.

3741. The new judges to be appointed—Yes.

3742. Including the Lord Justice, or not?—We were not sure what the Lord Justice would be; that did not enter into our deliberation. What you are now asking me about we did fully consider, namely, who ought to make the rules; and we came to the conclusion that it was desirable (I think there is a recommendation in our Report upon the subject), that a quorum of the heads of the Court should make the rules. We did not take into account the Lord Justice. I am now only expressing my own opinion, that if the Lord Justice be a judge, taken *pro hac vice* from a court of law, I should think he ought not to assist in making the rules. If he were made a Lord Justice, like the Lords Justices in England, I think he ought to make the rules, because he would be a higher functionary than anyone, except the Lord Chancellor.

3743. Mr. *Whiteside.*] That recommendation merely relates to the sale of estates?—That is true; that was the most pressing point with us. I think I may safely say that our views were what I have told you.

3744. Sir *J. Graham.*] With respect to a matter of so much importance as that which I have glanced at, namely, the question whether the personalty shall be exhausted before the remedy shall lie against the realty, ought that to be provided for by Act of Parliament when the transfer takes place, or might it be left to rules to be made by the tribunal upon which you confer the powers?—In my opinion, it ought not to be provided for by Act of Parliament, but it ought to be left to rules; I am prepared to give my reasons for it; I do not think it would be an exaggeration to say, that in 99 cases out of 100, there is no personal estate. I may say the only abuse in almost every case is a certain amount of delay in taking the account. I will venture to say that in my experience in the Court of Chancery, in almost every case, the return is nil as to personalty, therefore it would appear to me that the Chancellor and the judges of the Court might make rules that would give the judge hearing the case, a power to decide in every individual case. It appears to me that the only way in which complete relief could be given, is to empower the judge to decide in every case whether he would make a direction for instantaneous sale or not.

3745. Sales have taken place in the Incumbered Estates Court of the landed property of some of the ancient nobility in Ireland; were those peers devoid of personal property?—I cannot tell; I doubt whether you could get a return of it; I happen to know everything connected with some of the greatest cases.

3746. Take the one which in your recollection is the greatest in point both of antiquity of title and largeness of property?—So far from there being a personal estate, the owner had not anything; the coat on his back was not his own, that is my answer; his plate had been pledged, and everything swept away long before. There is one great family with many noble branches, and great estates; the estates of two branches have gone through the Incumbered Estates Court; one estate being about 35,000 *l.* a year, and the other very close to 20,000 *l.* a year. There is no secret about it, it was discussed in open Court.

3747. There was no remedy against the personalty before the realty was touched?—There was none to be touched; somebody had his hand upon everything. I know other noble families where the case was not so.

3748. There are noble families whose estates have been sold where the personalty has remained untouched?—Yes. There would be a great inaccuracy if I did not go on further. In every one of those cases, and I believe in most other cases that can be named of a sale in the Incumbered Estates Court, it will be found that the estate and the personalty belonged to different people, and that the personalty

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alty cannot be reached at all. The case is this: The man says the debts are the debts of my father, the personalty is mine; you cannot take my personalty when you are coming to sell the estate of my father; it may be that it is an heir-loom that has descended from my father; it may be I am a debtor to the estate of my father. You would find that the accounts to be taken would not be an account of the personal property of the man in the occupation of that estate, but of some by-gone possessor. It may happen that the account is the account of a man's assets who has been dead fifty or a hundred years.

3749. In the Court of Chancery (Ireland) Bill, brought in by the law officers, there is a set of clauses for the sale of settled estates; have you looked at those clauses?—I was not aware of it until yesterday morning; I read them yesterday.

3750. That forms no part of the recommendation of your Commission?—Certainly not. If it had not been that somebody was good enough to lend me the evidence of one of the witnesses, which referred to them, I should not have known of those clauses.

3751. Does it appear to you germane to the matter of the sale of incumbered estates?—I think not. When I first read that part of the Bill, I was certainly more startled than I ever was in my life. I read it with as much care as I could devote to it in a short time. It struck me that the clauses were prepared with very great skill; but the view I would take of it is this: If it be proper to have legislation upon the subject, it will operate upon the law as carried out in pursuance of our recommendation; and then, if it be proper for England, it is proper for Ireland; and if it is improper for England, it is improper for Ireland.

3752. Allow me to call your attention to clause 151, "Upon the sale of the whole, or any part of any settled estate, it shall be lawful for the court, if it shall see fit, to allow any part of the consideration to be a rent issuing out of such estate, and to be secured and settled in such manner as the court shall approve." Would that enactment appear to you to be germane to a measure for the relief of incumbered property, that there shall be power to sell for a rentcharge without limitation bearing upon the whole income derivable from the estate?—I remember it, and I think it would be a terrible mischief.

3753. You would be surprised to find such a clause in a Bill for relieving incumbered property from settled charges?—I do not think that any portion of that legislation belonged to the matter I had to consider as a Commissioner. You are asking my opinion; it would appear to me that nothing is so desirable in Ireland (I am now speaking not as a lawyer, but as an Irishman), as to make every portion of land that can be made fee simple unincumbered. I have the greatest objection to leases on lives renewable for ever, and to every modification of property which tends to give any interest in lands to any persons save the owner in fee and the occupying tenant.

3754. Even if it should be wise to legislate with regard to settled estates, such a clause, so far from being germane to the relief of incumbrances on property, would be in contravention of the principle?—It would make the incumbrance perpetual upon that property, which it could never be relieved from but by purchase; you would be making a debtor and creditor; it may happen you would be creating a cause for a receiver.

3755. And that from the very moment of the sale, the policy of which was to relieve the estate from incumbrance?—Yes, I dare say, if the Committee in getting the amount of receivers have specified how many are for annuities, they will be surprised at the number, because that is one of the great causes why it is difficult to get rid of receivers; it is almost the only remedy for an annuity. I can explain how that happens: a gentleman who has a good estate let to tenants with a mortgage upon it grants annuities, especially when his affairs are getting worse and worse; a creditor would say, I will not lend at six per cent. The owner says, I will give you an annuity; that creditor is sure to have to resort to law when the grantor's circumstances are getting bad; when he does, he cannot recover at law; the mortgage is an outstanding bar; he cannot distrain upon the tenants, and the consequence is, he is obliged to go to the Court of Chancery, and state his difficulties, and get a receiver, which he does, of course.

3756. You have touched upon receivers; is there any legislative remedy with reference to the evil of the multiplication of receivers which is now wanted?—I am afraid it is an evil incident to the rights of property, and that there is no mode of avoiding it without such an interference with those rights as people would not bear.

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3757. From the social condition of Ireland, land is still the great security, and in the great majority of cases, the only security offered?—Nobody thinks of anything else; we have no such thing in Ireland (I am speaking generally, the Committee will not bind me to the very letter) as a bill of sale of goods, which is a security one hears of every day in England; in Ireland land is the security, and nobody would lend money but upon land.

3758. You have Government stock in Ireland?—Yes.

3759. Do not you give that as a security for a short interval?—Yes; I go to the Bank of Ireland whenever I want 1,000*l.*, and they charge me now six per cent. for it.

3760. Generally speaking, the security tendered in Ireland is landed security?—Yes; those who have stock in Ireland very seldom want to borrow.

3761. Not even for short intervals for commercial purposes?—A commercial man may; he has no land perhaps; stock is the very best thing of all to borrow upon, because they lend upon it at the current rate of interest.

3762. There is a defect with regard to receivers, arising from recent legislation, subversive of the measure recommended by Lord St. Leonards, as to the limitation of 150*l.*; would you recommend that that clause to which we referred yesterday should be repealed?—I have thought it over, and it would not do to repeal that clause alone, because it will require very considerable alteration in the whole of that particular Act of Parliament, all of which I think ought to be altered. The portions of it which limit the lien of a judgment upon land to five years, ought to be most scrupulously retained; it is the Irish Act corresponding with the English enactment that limits judgments to five years; at present, after five years, the judgment ceases to be a lien upon land. I cannot tell you how the law is; it is not yet settled. I apprehend a very curious anomaly does at this moment exist by making a judgment a mortgage at the election of the judgment creditor, who does it by making an affidavit, and going down to the registry office and putting that affidavit on the files of the office. The limitation as to the judgment is five years, whether the mortgage judgment is to be limited to five years, or whether it is to have the same duration as an ordinary mortgage, I do not know.

3763. Who introduced that Act?—I cannot tell anything about its history; until it was passed I never saw it.

3764. The putative father does not own it?—No; it passed in July 1850.

3765. Do not you think, if we had to reconsider the Court of Chancery in Ireland simultaneously with this proposed merger, that some reconsideration of that Act is necessary?—Most undoubtedly.

3766. Any measure would be imperfect which overlooked that Act, in your opinion?—I would not go quite that length; I think you might make a perfect Bill for our purpose without entering on that consideration, but I think the social condition of the country would be affected, and you would place the Court of Chancery under the necessity of carrying out a pernicious law.

3767. Would not the Committee fall short of its duty, when from this investigation it would appear that there are 1,500 receivers in Ireland, to overlook such a grave state of facts, partly traceable at all events to that Act?—My opinion is so; I quite agree with you.

3768. It appears to us that all the receivers, as a rule, are forced to find two sureties in possession of landed property?—No; that is not the rule. I could, if at home, produce several instances to the contrary, in which the question was considered. I admit practically that it is so, because the creditor always presses for landed security; the master has a discretion (I am speaking in the presence of one who knows the practice better than I do). I only speak of it from knowing that it has been discussed, and I believe decided, that if a man possessed of great personal property offered to be the security, his security would be accepted.

3769. You admit that the evil of receivers affecting landed property in Ireland is great. Is not that evil most materially increased when each receiver is required to have two sureties to the full amount of his recognizances also charged upon land. Is it not an increase in a geometrical ratio of incumbrances?—The question shows great knowledge of our state, but the evil is much greater than I am sure you anticipate. I will tell you how it operates: suppose I have an estate of 10,000*l.* a year, my agent, very likely, wishes to become a receiver of a large property in Chancery; he says, you know me, pray become my surety. I do, for 10,000*l.*, and in the course of years, if I want to raise money for any purpose no one will lend me the money until I get rid of the recognizance; it

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is a flat bar; what happens is this, I go to the Court of Chancery at considerable expense, or rather the person I am surety for is bound to do it in honour; he comes to the Court of Chancery, and applies to the Master of the Rolls to vacate that recognizance, then the receiver is called upon to account, and all this is done at expense, delay, and trouble; the receiver does account; the Master of the Rolls is satisfied at the expense of the receiver, and he vacates the recognizance. I have my transaction completed, and then I enter into a new security, having put this small additional blister upon my estate; that is an operation I have known two or three times performed in a single case.

3770. Is not some legislative interposition necessary to check this grievous and frightful evil?—I do not think it is growing; I do not think it is worse than it was; I hope it will be a great deal better: I consider as long as there are receivers there must be sureties; I think you may lay that down as a maxim, that as long as there are receivers sureties there must be.

3771. No one is better conversant with the operation of the law than yourself, in Ireland, perhaps you may not be equally conversant with the operation of the law in England; how is it the system of receivers is so deeply rooted, and so general in Ireland, as compared with a similar power rarely exercised by the Court of Chancery in England?—It depends, in my opinion, not upon the law at all; but on the wonderful difference in the social condition of the two countries; that is my impression.

3772. Mr. *Whiteside.*] And upon the practice, of course?—I do not understand that a person in England could not come to the Court of Chancery for a receiver in the same case that he could in Ireland; the distinction is that the social practice differs, but the legal practice does not, because I believe I can refer, in Vesey, junior, to cases upon almost every receiver point like our own.

3773. Sir *J. Graham.*] If the Legislature of this country hastily were to pass an Act, that except in the cases of minors and lunatics there should be no receivers in Ireland, would that strike at the very root of credit in Ireland?—In my opinion it would; the country could not bear it; that is to say, it would be equivalent to an Act to declare that the owner of the land should not have power over it.

3774. At all events, to the extent of borrowing?—Of course I receive your question in the sense you put it to me, and my answer is wider; I mean it exactly to apply to your last question.

3775. In your opinion, considering the social condition of Ireland, even after this large sale of incumbered property, such an enactment would be fatal to the rights of property, and would bring all power exercised over property to a stand still?—That is my opinion. I think, if I may so express it, that the vice of modern legislation for Ireland has been to endeavour to do in a year what must be done by time. I believe that the operation of the Incumbered Estates Court and a continuing power of the same kind will gradually relieve the country, and a beneficial operation is taking place by the division of land. The great estates, such as you have referred to, have been greatly broken up, and the result of that will be that land will be more frequently sold, and I hope not so universally settled, because one of the greatest evils, in my judgment, in Ireland is, and perhaps it explains our social position, that Irish people think of nothing but land as a security. If a farmer marries his daughter, he settles a lease which he holds at a full rent upon the marriage, with voluminous limitations, that would suit Lord Fitz-Williams' estate, showing that land is the only thing that people look to in Ireland; instead of having 500 *l.* or 600 *l.* to go on as a farmer, everything is fettered and limited. I am astonished at people talking of there not being conveyancers in Ireland; I am sure there is not any imaginable kind of conveyancing which is not called into action for the most inadequate objects.

3776. You desire the facilities for the sale of incumbered property to be retained, and perhaps extended to unincumbered property; the evils of receivers to be carefully watched, and any past enactments giving undue facility to extending the system remedied, and no further legislation for the present with respect to receivers; is that the effect of your evidence?—Yes, I should say so. I think it would be worth consideration whether or not it is not properly within the scope of legislation to say that no debt less than a certain amount shall be made the subject of receivership. The law, until that recent one, enabling judgments to be converted into mortgages, required that 150 *l.* should be the minimum; that also is quite a modern law; I believe, of the 13th & 14th of Victoria.

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3777. Suggested by Lord St. Leonards after the Receiver's Committee?—Yes. It is worthy of consideration whether or not the 150 *l.* limit might not be increased. To enact that a creditor shall not have a receiver over land for a debt less than 300 *l.*; of course that is a matter for consideration.

3778. Of course it occurs to you that there is no principle in the limitation itself?—None; but I consider that if you are to do everything upon principle you will fall short, because we do not act upon principle; the country does not act upon principle. It is to meet the practice I should desire it.

3779. If anything be done with regard to the limitation, it will be the extension of the sum of 150 *l.* to a larger amount?—Yes. I may be considered too lawyer-like, but I think a principle may be suggested. If, upon careful examination of it, the expense of raising the debt by means of a receiver bears a most undue proportion to the amount of the debt, it would strike me as worth while to consider whether that method of levying the debt ought to be applied if there were no fair proportion between the amount of the debt and the enormous expense of raising it. I think it would be worthy of consideration.

3780. Instead of taking the principle of the debt, what would you say to a limit in reference to the amount of rental to which receivership should apply?—I am not sure that it would not be a better test; and I do not doubt that both might be applied.

3781. There might be a double operation, you think?—Yes, there would be nothing inconsistent in saying that no debt less than such a sum shall be levied, and no estate less than such a rental shall be placed under a receiver. I must add that would be a much better limit; and I will tell you why. The annual expense of a receiver can be tolerably clearly ascertained. Put the case of an income of 20 *l.* I put it for the sake of illustration. The expense of the receiver is 15 *l.*; instead of paying off the debt, 15 *l.* of the income goes for the law expenses and 5 *l.* to the debt.

3782. Having watched the social and political effect of the sale of incumbered property, a large amount of which has already been sold, on the whole are you of opinion that that sale has been conducive to the good of Ireland?—Socially and nationally an immense benefit. It is a very wide question, and in giving you that answer I deal with the question as if I had the whole kingdom to parcel out at my discretion, and only to decide how I would do it best for the public good.

3783. Though the general good may have been promoted, do you think great hardship has been inflicted upon individuals?—Dreadful individual hardship; most heartrending cases have come to my own knowledge.

3784. The answer that you gave yesterday, that the most heavily incumbered estates have been sold, would lead to the conclusion that the benefit may be extended, and the individual hardships would henceforth diminish?—I consider now, as far as one can look into futurity, that but little hardship can in future arise.

3785. Especially if the power of sale be administered as you have now recommended, under the Lord Chancellor, the highest law officer in Ireland, acting in the face of the public with the heavy responsibility of checking and controlling the whole operation?—That question contains my entire view upon the subject; it is the great position, the great responsibility of a great officer superintending the whole operation that I think will give vast confidence to the public; the measure that we have is most useful, and the continuance of its principle is, as it appears to me, indispensable.

3786. There is that mixture of good and evil in everything, as you observed; the countervailing evil is the great increase of expense and delay?—If I had the same fears that others have upon that subject, I should hesitate in wishing for the change; but I have not those fears, and I will tell you why; I have the means of judging of the nature of the expense, and the nature of the delay in the Court of Chancery; a case of the greatest magnitude is now frequently heard within three or four months from the time it is instituted.

3787. You stated yesterday that neither in the Master of the Rolls Court, nor in the Court of the Lord Chancellor, is there any considerable arrear?—The Master of the Rolls never rises until his business is disposed of, and the Lord Chancellor never rises until he is pressed to do so; I am the person always put forward to press him. The bar are very kind to me, and I feel bound to do anything they ask me, and I concur with them in saying to the Lord Chancellor, "Do let us have six or seven causes to begin with next term." The Chancellor is as kind a judge as ever sat, as well as most painstaking, and he at once yields.

3788. Upon

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3788. Upon the whole, we are now in possession of your views with respect to the Incumbered Estates Court, and the transfer to the Court of Chancery?—To tell you the truth, I never thought before I came into the room of stating my views to the Committee; I came here to answer any questions that might be asked; it is possible if questions were put to me, something I have not thought of might occur to me.

3789. The great outline of your views has been established?—There are but two points I particularly wish to mention; I wish to say a word about the continuance of the Masters; I abide by the answer I gave yesterday, with the qualification that there is one Master whose great and eminent services for a long period of time entitle him to retire. I should be sorry if anything I said would influence his being delayed one hour from receiving the reward he so richly deserves, I allude to Master Henn.

3790. I have received a communication from the principal officer of Master Henn, who has been somewhat grieved by a question I put with respect to his relationship to him, and as to his education. I refer to Mr. Stanford; do you know that gentleman?—Intimately.

3791. Is he a competent gentleman?—As competent as any man that can be found.

3792. Have you known him long?—I have known him 20 years.

3793. In your knowledge, he is a most competent officer?—I am bound to say so, for we promoted him to an office of trust just this time 10 years ago, and I have never had reason from that day to this to doubt that Lord Haylesbury made a most excellent appointment.

3794. Sir *E. Perry.*] You used the expression to-day that a reconstruction of the Court of Chancery is necessary?—Not in the same sense you put the question now. The word "reconstruction" is inaccurate. I would rather say remodelling some portion of its practice.

3795. A great portion of the evidence you have given to-day and yesterday refers to reforms in the Court of Chancery?—To carrying further reforms already made. Reform in the Court of Chancery is not, I think, necessary now for any purpose beyond what is recommended in that report.

3796. The principal matter referred to that Commission, in fact the only matter, was as to the Incumbered Estates Court, was not it?—No; if you read the Commission you will find that the Court of Chancery was referred to us. We would not have presumed to have entered into the consideration of it, if it had not been referred to us.

3797. Was the whole matter respecting the Court of Chancery referred to your commission?—Certainly.

3798. Was not the mode of continuing the Incumbered Estates Court the principal part of the subject matter referred to you. The words of the Commission are, "and to consider and report whether it would be desirable that the said Court should be continued, either permanently or for any and for what period, and whether with any and what additions to, or alterations or modifications in its powers, constitution and procedure, or whether the said Court should be annexed to, or its powers transferred to our Court of Chancery in Ireland"?—You can form a better judgment about that, I dare say, than I can. The only thing I can answer to is the fact that the very first question we considered as Commissioners, was the construction to be put upon the words now read to me; and the men I have had the honour to act with a long time in public life, as well as myself, after full deliberation, came to the conclusion that our powers, in that respect, were as extensive as the necessities of the case might require.

3799. Is it not the fact that the main requirements now in Ireland, respecting the Incumbered Estates Court, are whether it shall be continued, or put an end to, or transferred to the Court of Chancery?—Yes. I believe they are the only three propositions that now can be suggested in reference to it.

3800. The general question of a complete reform of the Court of Chancery is not submitted to the Commissioners or to this Committee?—I did not understand that the complete reform of the Court of Chancery was thought of at all, because the Court of Chancery has undergone such vast reforms in the last 10 years, that I imagine it wants little reform, save such as may be required for the purpose of working out the alterations necessary for transferring the jurisdiction of the Incumbered Estates Court.

3801. Nevertheless, if the scheme of the Commissioners is carried into effect,

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and the jurisdiction of the Incumbered Estates Court is transferred to the Court of Chancery, that necessarily raises the question as to the procedure of the Court of Chancery, and very many questions as to the reform of the Court of Chancery?—It raises a question as to a change in the proceedings of the Court of Chancery, because the Court of Chancery at present does not give a Parliamentary title, and steps must be taken by the Legislature to invest it with that power, and to add to that power all the limitations and restrictions which are necessary for the purpose of making it work rightly.

3802. Do not you think it complicates the question very much when we are considering how the Incumbered Estates Court shall be constituted to mix up with it the reform of the Court of Chancery?—I do not think they can be separated; you perhaps know better than I do, but it does not occur to me that reform is the right word; I think the word is regulation of the proceedings of the Court of Chancery, for the purpose of giving effect to any measure which the Legislature shall carry out in reference to sales in the Incumbered Estates Court.

3803. Surely the abolition of the Masters, and the substitution of Judges, is one reform?—Certainly.

3804. Is not that one of the schemes?—One of the recommendations.

3805. Therefore to use the words "reform of the Court of Chancery," is not incorrect?—Not in that sense.

3806. Do not you think mixing that question up rather complicates the main inquiry?—No; it is a complement to the main inquiry, and a necessary part of it.

3807. The first question you had to consider was whether the Incumbered Estates Court should be continued as a permanent institution, or be transferred to the Court of Chancery?—The first question we had to consider was whether that or an analogous court was to be made perpetual.

3808. You decided upon transferring it, for several reasons which you gave in your Report?—Yes.

3809. You told us yesterday, if it is transferred to the Court of Chancery, that the Vice-Chancellors would perform the duties now performed by the Commissioners of the Incumbered Estates Court?—Yes; and if the Master of the Rolls was good enough to take part of the duty, he would assist them.

3810. In your opinion, the period at which the Vice-Chancellors will perform those duties, would be in the vacation after term?—Yes; that is what I should suppose. It would be entirely a matter for their consideration; I mean by that, reading the abstracts.

3811. May I ask you whether the Judges in Ireland have any sittings after term?—The term in equity is not regulated by the term at law. The equity Judge commences with the first day of term, and sits till he has discharged his business, without reference to the term; they are called sittings rather than terms.

3812. Therefore, if the business increased in Ireland, the vacations may be very much diminished?—Yes, that is so.

3813. It would therefore follow that the time which could be devoted to the reading of abstracts may be a diminishing period?—My notion is, and I believe the view of the Commissioners was, if such an emergency arose, there ought to be a third Vice-Chancellor appointed. We thought ourselves bound to the narrowest limit, because there is a difficulty in getting rid of Judges if once you create them; therefore we thought it best to keep within the mark, leaving a power to the Executive, if a necessity arose, to make the staff fully adequate to the discharge of the duty.

3814. *Chairman.*] Were not the Commissioners very much influenced by ideas of economy?—At that time I was, in some sense, responsible, and I will say that I was more influenced by that than anything else. There are great difficulties in getting at the Treasury. If it had been in time of war I should not have had so much scruple in making a wider recommendation.

3815. Sir *E. Perry.*] Allow me to refer you to page 6 of the answers of the Incumbered Estates Commissioners. They state that the reasons for the successful operation of the courts depend, fourthly, upon "The facilities with which applications may be made to the Commissioners, and information obtained without expense from them, or their examiners, as to what has been done, or is likely to be done in each case." If the Vice-Chancellor performed those duties in the vacation time, that vacation being a diminishing period, would solicitors' clerks have the same opportunity of communicating with him with celerity and economy?—The

question

question and the passage you refer me to, in my understanding of them, do not relate to the same thing. The business to be done in the vacation is reading abstracts of title; no solicitor, nor anybody else, ever made, or could make, an application to them upon that. That is a thing Dr. Longfield personally explained to us most fully. In any matter connected with a creditor's demand, a person comes in to him, and asks him a question with reference to the creditor's demand, and he answers it upon the spot.

3816. Still we find, both from this evidence, and the evidence of witnesses who have been before us, that the mode in which an application can be made to the Commissioners personally is considered a very great advantage by the profession? —So I think.

3817. You think the same facilities should be afforded by the Vice-Chancellor, who would be a person of much greater rank, who would be charged with those duties?—It must be afforded; if the business is to be conducted by the Vice-Chancellor and his clerk, the Vice-Chancellor or his clerk must do it. If you put the question to me, based upon the assumption that a person placed in a high condition will not discharge his duty, I must decline to answer it.

3818. I did not put it upon that hypothesis; I put the condition of a Judge with very important duties, and with a very high salary, having the whole bulk of equity business to dispose of, as contrasted with the condition of an officer who has only certain classes of duties to perform, and a lower salary; my question is, whether you think the same facilities would be given in the latter case as in the former to parties for personal communication?—I think, if the views we entertain be carried out, every Judge will find it for his interest to do as the Commissioners of the Incumbered Estates Court have done; putting it upon the base motive of the interest of the Judge, I think he would do the best for himself.

3819. We know that Judges of high rank are only addressed by the Bar, and rarely come in contact with solicitors; it is quite discordant with the practice of the court over which they preside; do you think the court is likely to be so well worked by high Judges as by those who can have personal communication with the solicitors?—My experience of Judges is quite different; I have never seen any want of courtesy, or any indisposition to receive solicitors on all proper occasions.

3820. Does that practice occur in any part of the practice in Ireland; is the Lord Chancellor or the Master of the Rolls open to applications from solicitors all day long?—No; it is not to be expected that anybody in discharging one duty will be interrupted in it. I do not apprehend that that is the practice, or ever was, in the Incumbered Estates Court; but during the time that the Incumbered Estates Commissioner sits in his chamber, a time well known and well understood, just as if a Judge were sitting in his chamber, every man may come to him and ask him the question he wants, and he gets his answer.

3821. Is it not the practice of the Commissioners to sit four days a week, and are not they open to applications on all sides?—As I understand, the Commissioner sits in chambers, and he has the case discussed before him in chambers, just as a Judge has in court. I have seen this many times. If anybody ventured to interrupt him, I take it he would not only be reproved by the Commissioner, but it would not be tolerated by those engaged before him.

3822. Is it not the practice that he does sit for four or five hours a day, open to applications from everybody who wishes to make them?—Yes; and so, in my opinion, will the Judges, under the system we contemplate.

3823. Is that the course of practice now, before any Judge in Ireland?—We have no such persons as those who are contemplated by this Act. It does not appear to me to be possible to come to a conclusion as to what would take place in a system essentially different from that which exists.

3824. I am contrasting the Equity Judges, who you contemplate will have very important duties to discharge, with the Commissioners?—My impression is that the present Judges are adequate to the discharge of all the business which they have now, and that the new Judges and their clerks will be able to discharge the new business, and a large portion of that now transacted by the Masters. According to our notion, they will be constituted in a great measure to carry out the provisions of this code, which code is to be founded upon the practice we have recommended.

3825. Is there not a danger that the Judges will carry with them the practice which

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which exists in other parts of their court?—How is it possible I can answer that question?

3826. You contemplate the Master of the Rolls will perform those duties?—If he likes; and I have no doubt if he does he will perform them in the very spirit of the Act.

3827. It is competent to the Judge, and he cannot decline, if counsel come before him, to hear them; according to the practice of his court, in other parts of his duties, he hears counsel on each application. If that is the practice of the court, may not that practice be continued in the incumbered estates practice?—I do not see why it should; I do not think myself it is a fair thing to say, because a certain practice now exists, that when we are going to introduce a new business the same process is to be adopted for doing it.

3828. What is the advantage, when there is a practice existing which is for the benefit of the profession and the public, to change it for something which may be otherwise?—My opinion is, that if the Incumbered Estates Court is not put an end to by the Legislature, it will be put an end to by the public.

3829. Do you think the feeling of the public in Ireland is against its continuance?—Most decidedly.

3830. That is rather at variance with the evidence, is it not?—I did not hear the evidence. In Ireland, the public is as determined as possible to have a Parliamentary title, but I do not think it is to have it by the present means.

3831. We hear from the solicitors, who are better acquainted with the opinions of the public than even the Bar, that they consider the existence of the Incumbered Estates Court, or something similar to it, very beneficial?—Something similar makes all the difference.

3832. The two great evils which have been stated here are, first, the inconvenience of the locality, and, secondly, the want of a permanent character in the institution?—Those are not the evils which I have heard, and I do not think they are the evils felt.

3833. Are not those the evils which are pointed out by the Commissioners?—I think not; they are some of them.

3834. The Commissioners say, at page 12, "The inconvenient situation in which it is placed has given rise to many well-founded complaints"?—That is one.

3835. Then they say it was temporary?—That is two.

3836. And they say that the pressing necessity has ceased for an extraordinary tribunal?—That is the grandest point of all.

3837. We hear from your evidence to-day, that the existence of this court has been of unspeakable value to Ireland?—Certainly.

3838. The evils it caused have disappeared, and the benefit is likely to be increased?—I did not give any answer that the evils it has caused have disappeared.

3839. Tell me what the evils were that did operate?—The question you have put to me is with respect to the evils of the Incumbered Estates Court, and Sir James Graham put to me a question about the evils of the country.

3840. Your answer had reference to the value of a Parliamentary title, had it not?—I did not understand either the question or the answer to mean that.

3841. Will you give us your opinion as to the value of the Parliamentary titles which have been given during the last few years?—The value of the title is that it is indefeasible.

3842. What is your opinion as to the value to Ireland of the Parliamentary title?—The answer I must give as to the value is, that it is indefeasible.

3843. That may not be of value at all?—It appears to me that there is a difference in value between a defeasible title and an indefeasible title.

3844. I understood you to give an answer just now as to what was your opinion of the value of the Parliamentary title granted by the Incumbered Estates Court?—I consider it is quite as good as the title granted by any other court. It is no matter who gives you an indefeasible title, if you have it.

3845. No other court gives an indefeasible title except the Incumbered Estates Court?—I am quite aware of that; it is quite immaterial by what process you get it.

3846. What has been the effect of the working of the Incumbered Estates Court in Ireland?—They have sold a great deal of property, got rid of incumbrances,

brances, property has been disincumbered, and they have given titles which are indefeasible titles.

3847. Has that been of value to the social and political condition of Ireland or not?—Of great value to the social condition of Ireland.

3848. That being so, and the people of Ireland perceiving the value of that benefit, you still think Ireland does not desire to have the principle of the Incumbered Estates Court continued?—I am sure it does desire it in the strongest way; but there is a difference with respect to the Court and the principle of the Court.

3849. You think if the Court were made permanent, it would not be able to continue to operate beneficially for the people of Ireland?—I am far from saying that it would not; the question I have to consider is what is the best mode of carrying it out.

3850. Do you think, as the Report recommends, that the best mode of proceeding is to transfer the jurisdiction to the new Judges to be appointed in the Court of Chancery?—I do. I consider this, that in the great emergency that we had, it was necessary to constitute an extraordinary tribunal, but I think it is a most mischievous thing to have an extraordinary tribunal; it puts men in mind of the old forfeitures; whereas they think they are living under the law, if they are living under the old institutions of the country.

3851. Do you think if the Commissioners were transferred to the Court of Chancery, and were performing the same duties there which they have been performing hitherto in the Incumbered Estates Court, that would not be satisfactory to the public?—I must be excused from giving an answer which involves giving an opinion upon men.

3852. I thought you gave a flattering opinion yesterday with reference to the men; other witnesses who have been before this Committee have done so; do you concur in that opinion?—I neither concur nor dissent; it is a most disagreeable position to be placed in; I was written to, to know whether it would be disagreeable to me to give evidence; I wrote in answer to say that it would not give me pleasure, but that if it was thought that I could be of use, I would come, upon the understanding that I should be asked no opinion upon men. There is scarcely a person, I believe, about whom I could be asked with whom I have not been living in habits of the closest intimacy for a great number of years, and there are many of them towards whom I feel like a brother; and how could I bear to give evidence, and to be called upon, under the pressure of examination, to analyse the characters of my friends and acquaintances?

3853. Will you allow me to call your attention to the 14th resolution, which was passed at a meeting of the Commissioners on the 31st of March 1855, which is at page 23: "That the transfer of the powers of the Incumbered Estates Court to the Court of Chancery can only be recommended by the Commissioners on a reasonable expectation that the present Commissioners and staff of the Incumbered Estates Court shall, so far as may be reasonable or necessary, be transferred to the Court of Chancery." Did you concur in that resolution?—I did.

3854. May I ask you whether, in "the present officers and staff of the Incumbered Estates Court," you included the Commissioners of the Court?—I did. It is right, in justification of myself, to say, that having concurred in that resolution, I concurred in expunging it, upon reasons which appeared entirely satisfactory to myself.

3855. *Chairman.*] Substituting for it what is now at page 17?—Yes. I have read the evidence of the Master of the Rolls in England as to what occurred, and I subscribe to every letter of it. It is a most accurate account of what occurred. I will not say that I am not the most answerable of all persons for the resolution passed at the Rolls House. When I went back to Ireland, at the next meeting we had in Ireland, it was taken into consideration, and there were persons there for whose opinions I must always entertain the greatest respect. It is only due to Dr. Longfield to say that he again brought the consideration of the matter before us in Ireland, making the objection which he had made in England in the most honourable manner. It was fully discussed and considered, and upon full deliberation I came to the opinion, as an individual, that I had fallen into an error in agreeing to that resolution, and I most fully concurred with my brother Commissioners in expunging it.

3856. I believe Dr. Longfield thought it was very indecorous of a Commis-

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sion, of which he was a member, to make such a recommendation?—He did. I was not pressed with that ground, and if it stood upon that ground I would have kept it in. I more than once expressed to Dr. Longfield that I thought the scruple was not worthy of him, and that he was quite above anybody supposing that he would recommend anything for his own interest. But upon reasons, which I hope it is quite unnecessary to state, I came to that conclusion, with everybody who signed it; after great deliberation, in Dr. Longfield's presence, we all concurred.

3857. Mr. *Whiteside.*] What we are to understand about this 14th resolution is, that when you originally met it was agreed to, and upon reconsideration, you determined to strike it out?—Yes.

3858. What perplexed the Committee was this, how, after your agreement to strike it out, it was yet found to be the 14th recommendation of the Commissioners?—I do not think you will find it to be so. You will find that it is in the report of the proceedings at the Rolls House in England. I have present to my mind all that occurred about it without referring to it.

3859. First, we find in the report of one day's proceedings the 14th recommendation, and then we find, on the 12th of April, that it is struck out?—Yes.

3860. Now we will turn to the Report: "In addition to the staff at present employed in Chancery, officers will be required to carry on the new business which will devolve on the Court; and we recommend the transfer of the powers and business of the Incumbered Estates Court to the Court of Chancery, in the reasonable expectation that those officers of the Incumbered Estates Court who have efficiently discharged their duties there, and from experience have become familiar with the practice and the details of business, will, so far as may be practicable and necessary, be transferred to and made officers of the Court of Chancery." Does that refer only to the ministerial officers of the Incumbered Estates Court?—Certainly.

3861. And excludes the Commissioners?—Yes, plainly. Instead of the expression it excludes the Commissioners, I should say we did not mean to include the Commissioners.

3862. Viscount *Monck.*] You did not mean to touch them at all?—We meant to offer no opinion upon the point.

3863. *Chairman.*] You meant to leave it open?—We meant to leave it entirely open.

3864. Mr. *Whiteside.*] You meant to leave it to the Executive to exercise its judgment in appointing fit and proper persons to fill the office of Vice-Chancellors which you recommended to be created?—With the qualification that they should be members of the Irish Bar. The answer is perfect, if you add that to it.

3865. Let me draw your attention to this question, which I put to the Master of the Rolls for England: "When you agreed to the 14th recommendation, to which I have already called your attention, did you contemplate that Mr. Hargreave would be included in that transfer?" The answer is, "I did expressly. I expressly stated, 'Unless Mr. Longfield and Mr. Hargreave are taken to the Court of Chancery, inasmuch as they have really framed the working of the system, I shall have no confidence whatever that the thing will be carried into effect in a proper manner?'" Was it expressly stated to you and your brother Commissioners by the Master of the Rolls for England, that unless Dr. Longfield and Mr. Hargreave were taken to the Court of Chancery, that he, the Master of the Rolls in England, would have no confidence whatever that the thing would be properly carried into effect?—This is entirely a matter of recollection. If the Master of the Rolls has stated that he said so, I am sure that he did; but if I had been giving the same account that he does, that very expression of his, "having no confidence," I would say I have not any recollection of it. It is possible he may have said so, and I think it is very likely; but if he had said it in my hearing, with the feeling I have, I would have expressed an opinion that he might have confidence; I would not hear anybody in my presence state that confidence could not be put in the Irish Bar without expressing myself very warmly upon the subject.

3866. As I understand, according to the best of your recollection, the precise matter does not occur to your memory?—The Master of the Rolls is substantially correct. That I myself was the person who overruled Dr. Longfield's objection, is true, and I do not say that I would not have continued of the same opinion, but for the reasons afterwards suggested to me, which made me change it.

3867. Do

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3867. Do you remember Sir John Romilly expressly stating what I have read to you?—I really must say I cannot doubt it, if Sir John Romilly says he did. The only thing that I can say is, that I do not recollect those exact words; I cannot say more. This I will say, they certainly did not strike me, because if they had, I think I would recollect that I had said something upon it.

3868. Supposing it was stated to you now, that no confidence could be entertained in the working of the system, unless those two gentlemen particularly were transferred, what should you say?—I think it is as unfounded an opinion as ever was expressed; no language that I can find would be strong enough to express my dissent consistently with the great respect which I feel for the Master of the Rolls.

3869. Do you believe that a person could be found at the Bar in Ireland, who is fully competent to perform the duties which are discharged by the Commissioners of the Incumbered Estates Court?—I believe there is a gentleman at the Bar of Ireland who is the fittest man in the world for the office, and I believe there are 10 who would be eminently qualified for it.

3870. With respect to the receiver question, was not the old execution by the common law writ of *levari*?—Yes, at common law before the statute of Westminster; that is going back to the reign of Edward the First.

3871. Under that writ of *levari*, was not the sheriff commanded to levy himself (you might call him in some sense a receiver) the debt, if he could, off the rents and profits of the lands?—The writ extended to body, goods, and lands; and that is a writ which still exists for the Crown.

3872. I believe it was not from the date of the judgment, but from the date of the execution that it took effect?—From the teste of the execution.

3873. And the priorities were not according to the date of the judgment, but according to the teste of the execution. You have already touched upon that which I intended to ask you about, namely, the old *custodiam*. That I believe was a fiction, by which the party was converted into a Crown debtor?—Yes.

3874. Was not that a very mischievous proceeding?—Dreadfully so.

3875. Under the *custodiam* process the party obtained a custodier, and got into possession himself of the lands?—Yes.

3876. He got, I believe, not a part, but the whole of the rents and profits?—Yes; but it came in practice afterwards very frequently to be put under the hands of a receiver; he had the right, if he was fool enough to do so, to go into possession, but people were very anxious to escape that enormous responsibility, and they got a receiver.

3877. I believe in that case, likewise, it was not according to the date of the judgment, but according to the grant of the *custodiam*, that the creditor took his execution?—Either that or the outlawry; it was something connected with the process itself, and not connected with the date of the judgment at all.

3878. Now we come to the writ of *elegit*; that was granted by the Statute of Westminster, in the reign of Edward the First, and under that the writ took effect according to the remission of the judgment?—Yes.

3879. Under the *elegit* the party only got a moiety of the lands?—That is all.

3880. The parties that got *elegits* got receivers likewise, did they not?—They did not get a receiver as a matter of right; they could not get one at all unless they were able to make an equitable ground for it.

3881. If they did not make an equitable ground, and they did not get a receiver, they went into possession of a moiety of the lands of the debtor?—Yes.

3882. But, I believe, if there were five judgment creditors, and the fifth judgment creditor got his *elegit* first, and got into possession, he might be turned out by an ejectment by the fourth judgment creditor, and the fourth by the third, and so on down to the first?—Yes, until the earliest judgment creditor held the possession, and then each successive creditor took half of what was left by the one next preceding him.

3883. With reference to the tenants; the tenants would, in that event, be harassed by an ejectment brought by each judgment creditor?—That would depend upon circumstances; because, what led to a receiver was, that the tenants were, in many cases, able to set the *elegit* creditor at defiance.

3884. Nothing could be worse than that system?—It was a practicable system in the reign of Edward the First, when there was a vassal upon the land, and the owner owed a debt, when the possession was not looked upon as a possession

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in anybody but the owner; but when lands came to be dealt with, and derivable estates created, it was, in substance, an impracticable system, and constantly involved the necessity of going to the Court of Chancery.

3885. You have anticipated a question which I was going to ask; when the *elegit* creditor sued out his writ, he got but a moiety of the lands of the debtor?—Unless there were two judgment creditors of the same term, and then they took the whole between them.

3886. If there were another, he got a moiety of the remaining moiety?—Half of whatever was left went to the next.

3887. So that there might be a confused, complicated, and almost ruinous system of dealing with land under the three systems of *levari facias*, grant of *custodiam*, and writ of *elegit*?—The mischiefs were so great that Sir Michael O'Loghlen's Act was a beneficent Act.

3888. Preliminarily to that Act, was not there the old Mortgage Act of the 11th and 12th of George 3, which enable the mortgage creditor, in cases where he did not pay for a sale, if there was a year and a half's interest due to him, to get a receiver?—That was a summary process by petition.

3889. That does not exist in England?—It does not.

3890. So that a party could make the Court of Chancery in Ireland, where there was a year and a half's interest due to him, appoint a receiver to pay him his interest, though he did not pray a sale?—There is a great difference in England; a mortgagee does not get a sale at all; his proceeding is of a different kind; his proceeding is a proceeding to defeat the right of the mortgagor and take the estate. In Ireland the proceeding is a proceeding to sell the estate, and I look upon it that the difference in practice between the two countries has originated in the difference of principle, that the one is to foreclose and the other is to sell, and as incident to the sale, a receiver is appointed. There is no receiver where the mortgagee is to foreclose, and the answer would be, as in England, "You may go into possession."

3891. Where he did not pray a sale, he was entitled under that Act to a receiver, to pay him his interest?—Yes.

3892. And the Court of Chancery became his agent for that purpose in Ireland?—Yes.

3893. Was there any limit as to the amount; would a mortgagee, if he was a mortgagee for 200*l.*, and there was two years' interest due to him, get a receiver?—Yes, to be sure he would.

3894. Were not all mortgages, according to your experience, almost invariably accompanied with what is called a collateral judgment?—I never knew an instance, I think, to the contrary.

3895. Therefore while a mortgage affected estate A, a collateral judgment, if there were estates B, C, and D, would touch them?—To be sure, that was the object of getting it.

3896. Therefore the difficulty of the debtor, if he had mortgaged an estate, was in disposing of his other estates?—Certainly. Sir James Graham asked me if I had stated everything that occurred to me; that question reminds me of a matter about the continuance of powers, something analogous to the Incumbered Estates Court, and it is this: the utter impossibility of selling estates for a portion of a man's debts, that is to say, I have a large estate and I owe twenty debts, and I want to pay off the first five of them; I cannot sell a portion of my estate, enough to pay off the creditors who want to be paid, without going to some court of justice, because the other creditors would have a right to impeach that sale afterwards. That is one of the reasons why I consider that the Incumbered Estates Court, or something analogous to it, should exist; a court to which a man can go and say, "Will you sell a sufficient part of my estate to pay off so many creditors, who want to receive their money."

3897. To revert to Sir Michael O'Loghlen's Act, the 5 & 6 of Will. 4, c. 55, by that Act was not the *custodiam* process abolished?—Totally, as regards the subject.

3898. The remedy was that by petition, the judgment creditor got a receiver to pay him out of the rents and profits of the whole estate?—Yes; the limitation of the moiety was got rid of.

3899. According to your judgment, was that an improvement upon the old system, as we have described it?—It would be impossible to state too highly the amount of improvement it was considered at the time; it is very singular, as showing

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showing how opinions change. I remember that at the time, persons who were supposed to entertain liberal opinions, thought it was the greatest boon; I have present to my mind one of the most eminent persons that I was ever acquainted with, and one who understood the subject perfectly, telling me that he looked at it as a blow struck at the landed interest; and I have a distinct recollection that I endeavoured to satisfy him that he was in error upon the subject.

3900. There was immense facility given by it to get receivers appointed for judgment debts, was not there?—Yes, there was; it was the substitution of receivers for a system that was considered to be worse.

3901. Are not judgments the main security in Ireland for money, or were they not at that time a common mode of securing debts, which did not exist in England to the same extent?—It existed in England to the same legal extent, but, as I understand the social system in England, hardly at all in practice; there was no difference in the law of England and the law of Ireland down to Sir Michael O'Loughlin's Act.

3902. But practically, judgments were not resorted to as a mode of raising money in England?—According to my knowledge of the practice in England, I understand when a man got a judgment, then he levied by execution.

3903. *Chairman.*] I think you have omitted one alteration in the law; was not there an earlier Act, which enabled parties to assign judgments?—Yes; I was not asked about that; I think it is right to add, that my belief is, that since the Act of 1850 was passed, judgments have become securities to a greater extent than ever they were before.

3904. Did you notice the 1st & 2d of Vict. c. 110, the English Act by which the moieties under *elegits* were abolished?—That is the same Act as our 3d & 4th of Vict. c. 105.

3905. With this distinction; the writ of *elegit* in England, until the writ of *elegit* was abolished, made the judgment an equitable charge upon the estate, but did not give any right to grant a receiver in England as it did in Ireland?—Just so.

3906. I believe that is the law in England at present?—It gives him the rights and the remedy that any person having a charge upon an estate is entitled to; subject to the limitations prescribed by the Act.

3907. It is an equitable charge?—Yes; it is only in a court of equity that it could be enforced.

3908. Mr. *Whiteside.*] The 3d & 4th of Victoria, c. 105, I believe, is the Act which contains corresponding provisions with the Act of Parliament you have just adverted to?—Yes; upon the subjects you have referred to.

3909. Did not the 1st & 2d Victoria, and the 3d & 4th Victoria, introduce a mischief which did not exist before in making those judgments a specific charge upon what are termed chattels, real?—I am not prepared to give an opinion that it was a mischief; it introduced it, whether it was a mischief or not.

3910. It introduced a new law?—It introduced a novelty.

3911. In reference to the transfer of land, while it may have facilitated the right of the creditor to get the rent, did not it embarrass the action of the sheriff in selling the chattels?—We were obliged to make searches for judgments, and to deal with the chattels just as with real estate.

3912. Did not that make the execution abortive to a certain extent, so far as selling chattels under a writ of *fieri facias* was concerned?—I think there is a case in the Queen's Bench upon that subject.

3913. Allow me to call your attention to the two statutes, the 12 & 13 Vict., c. 95, which was founded upon the report now lying upon the table; you may recollect that the second clause of that Act provides, that after the passing of the Act no receiver, and so on, shall be appointed for any sum not exceeding 150*l.*; that is the principal point in it?—Yes.

3914. It appears, from looking at the Report upon which that Act of Parliament was founded, that according to the evidence of the Deputy Remembrancer of the Exchequer, that he had been compelled to appoint receivers for sums under 100*l.*?—The leaning of my opinion, if I were asked as a matter of guess, would be very strongly that the amount of small judgments is very great. I go a great deal further; my impression is, that there were many judgments which people would not have thought of enforcing adversely, which they were instigated to do for the sake of making a little job of it.

3915. Was not there a great evil as affecting the estate, by having the judg-

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ment hovering over the whole estate, and in truth over the whole of the estates of the debtor?—I only doubt about whether that was an evil.

3916. That law existed?—Yes.

3917. Consequently, although a man had an abundant estate, yet in truth he could not sell one part of it while a judgment existed over the whole without being bound to pay off that judgment?—Yes, that is one of the reasons I have just now stated for wishing this compulsory power of sale to be given to some tribunal.

3918. The 13 & 14 Vict., c. 29, that has been so much objected to, seems to me to require to be clearly understood. How is it injurious to the owner of the land to enact, as it does by section 7, that all persons claiming under judgments, "shall in respect of such lands, tenements, and hereditaments, or such estate or interest therein as aforesaid, have all such rights, powers, and remedies whatsoever, as if an effectual conveyance, assignment, appointment, or other assurance to such creditors of all such estate or interest, but subject to redemption as aforesaid, had been made, executed, and registered at the time of registering such affidavit." He is to specify the lands against which he registers that judgment; has not that the effect of limiting the judgment to the precise portion of lands named in that registration?—No doubt; but my belief is that nobody ever goes to register a judgment who does not include in his net every land he can possibly get.

3919. It might happen, if he chose to register, if he were satisfied against estate A, if there two other estates, B and C, that they would be discharged from the judgment?—They would not be liable to the judgment.

3920. Would not that be in truth an advantage instead of a disadvantage?—Yes.

3921. Does not the Act of Parliament which prevents the assignment of judgments, tend likewise to mitigate the evils which arose formerly from judgments being so freely assigned; do you approve of that change in the law preventing judgments being assigned?—I believe it was thought that it would prevent judgments being resorted to as securities so much as they had been, and in that way it would be better; there are pros and cons in every question, and this is one, I think, that requires both sides to be looked at. I believe the way the matter stood was this; if a person wished to borrow 100*l.* or 200*l.*, or a smaller sum, he proposed to secure it by a judgment; and he obtained it upon a judgment at comparatively small expense; if he got it upon a mortgage, the expense of the mortgage would eat up a large portion of the loan, and therefore he was very anxious to raise the money upon judgment; and with a view to make the judgment as much as possible a convenient security for the creditor, a power to assign was given. The result practically, as between the debtor and creditor, which is what I am speaking of, was this, that the creditor having the judgment, could take it into the market and assign it, and instead of forcing his debtor to pay at a time when it was inconvenient, he got a person to advance the money; as between the debtor and creditor, I should be disposed to say that it was more beneficial to them, than if the judgment had not been assignable for the reason I tell you; it saved a great deal of law costs on small debts, something like 20 per cent.

3922. However judgments are not now assignable?—They are not.

3923. By the same Act of Parliament, judgments are no longer what we call a hovering lien over the whole estate?—They are not.

3924. Is not that an advantage?—I do not know whether it is an advantage; it is the law.

3925. An old judgment is no longer assignable upon future acquired property?—I think that is by the 2d section of the Act of Parliament.

3926. New judgment creditors, as you are aware, are deprived of the right of issuing an *elegit*; we have already disposed of the *custodiam*?—The position of a judgment is entirely changed.

3927. The judgment being by the Act of Parliament converted into a mortgage as against the land when registered against a particular estate, is it not a reasonable thing to give that party the only remedy that would remain, that is to say, a receiver and a sale?—My notion is, that it is a reasonable thing to give the creditor the shortest, the most expeditious, and the most effectual means of enforcing his debt as between debtor and creditor.

3928. Having traced the law pretty accurately, having deprived the judgment creditor of his positive lien over the estate, having also deprived him of a lien over after-

after-acquired property, and having enabled him to turn his judgment into a mortgage over a particular estate, is it not almost indispensable that he should have the remedy which a mortgage called a judgment mortgage would entitle him to?—It is inevitable.

3929. But the consequence to which Sir James Graham called your attention arises from not introducing the limit in the Judgment Mortgage Act which existed in the former Act?—In the other Act which is suggested.

3930. Did you ever happen to read my Receiver's Bill?—I never read one of the Bills; I never read the Bill before this Committee until yesterday morning. I endeavoured to read it before I came here, in consequence of something which I did not understand in the evidence.

3931. Does not it occur to you that the only safe mode of reducing the number of receivers is by facilitating the remedy which the creditor ought to have for the recovery of his debt, and if he desires a sale, to give him a speedy sale, if you can effect it?—Yes.

3932. Do you see any objection to the principle of giving the Court authority, in its discretion, to refuse a receiver where the rental does not exceed 200 *l.* a-year?—I think that is much too large.

3933. Giving the Court power to put the incumbrancer himself into possession?—I will answer your question broadly; I would never give that power; that is the worst of all the remedies that can be suggested It is the one we have got rid of by a series of legislation; because all those laws, from the first one down to those you have been reading, in my judgment, were all more or less to put creditors into possession.

3934. I am speaking now of an estate worth 150*l.* a year; if a mortgagee is put into possession of that, is not he bound to account for the rental as the mortgagee in possession?—I will tell you what happens. I am giving you my opinion now in reference to this question as an Irish gentleman, and not as an Irish barrister. The best thing you could do for the Irish bar would be what you have suggested. In every case you would have a bill for an account, and I think that would be ruinous.

3935. Have you looked at the evidence as to what is the cost of managing a small estate under the receiver system; do you believe that it is 20 per cent.?—I do not believe it.

3936. Is it 15 per cent.?—It may be, in some cases.

3937. That is the evidence before the Receiver Committee; take an estate of 50*l.* a-year, do you believe that a receiver appointed between the attornies over an estate of a rental of 50 *l.* a-year would produce anything for the creditors?—I think it would.

3938. Would it produce 5 *l.* or 10 *l.* a-year for the creditors?—There would be something. I do not try it by precisely the same test as that; what I think is, that the process of putting him in possession would take out of the estate, or from the parties, a considerable sum, and derange the social system much more, because I think it would take a great deal more costs.

3940. That is a speculative opinion; it has never been tried?—It has.

3941. The Court has no power to say, "I will not give you a receiver; but as the estate is small, I will allow you to receive the rents; I will not allow the expense of the receiver system to exist over this small property; I will have no recognisance, and in that case you will be responsible"?—I look at this question in a very large point of view as to its operation upon the social system; it is rather a question of that sort than a legal one. I believe its operation must be inevitable. I will take the case you put, that there is a property of 50 *l.* a year, and according to the supposed case 100 *l.* due; you go to the Court of Chancery, and the Court of Chancery cannot give you a receiver; but it says, "I will give you an injunction, and put you in possession of that property." You go and take possession; you are *pro hâc vice* the landlord of that little property, and you must squeeze the rent to the last farthing out of every wretch upon it; you can have no compunction; you cannot see to the condition of the estate, or what belongs to it; you must make the tenants' pay to the last farthing, or you will have to pay it yourself, because, at the end of the time, by multiplying the number of years by the rental, you are paid, and you must give up the estate; either you must lose the money, or you are paid. I will give you some proof how strong my opinion is about it. I may say that a great property in Ireland was under my management, in a

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legal sense, and I have introduced into the leases a covenant that the lease shall be forfeited the moment any court of justice touches the tenants' interest.

3942. *Chairman.*] If the creditor goes into actual possession, whether he is a mortgage creditor, or otherwise, is it not the rule that he is answerable not for what he has received, but for what he might have received?—For wilful default.

3943. Mr. *Whiteside.*] He is no longer at liberty to ride off upon the default or the mistakes of the receiver, but he is responsible for the whole value of the estate?—All I say is this, and I say it most deliberately, if any man owed me 400 *l.*, I would release him from the debt rather than go into possession of his property; I am only repeating the opinion of one of the cleverest men of business that ever was in Ireland. I have heard him say from the Bench, hundreds of times, that he would rather release a debt of 400 *l.* than go into possession; I refer to the late Sir William M'Mahon.

3944. In that case you would accelerate the sale?—That I would do in every case.

3945. Have you any objection to this provision, "Whenever a suit shall be pending in the said Court for the sale of lands, or any interest in lands, the Court, without waiting for a general account of incumbrances, and in order to give adequate relief to the parties without placing the estate under a receiver, shall make an order for such sale at the earliest stage of such suit, at which it shall be ascertained that such sale would be ultimately directed"?—I have no objection to the principle of that provision, and I believe I am expressing the sentiments of every one of the Commissioners, that we always contemplated as one of the new regulations of the Court of Chancery that should be carried into effect.

3946. *Chairman.*] Transferring the powers of the Incumbered Estates Court?—Certainly.

3947. Mr. *Whiteside.*] You have no objection to that provision which I have read to you?—No; I look upon it as involved in the recommendations.

3948. I do not see any recommendation about sales; is it not the case, that, according as you facilitate or accelerate the sale, you lessen the number of receivers?—We were all of that opinion. I have seen the Bill prepared by Mr. Blackburne, when he was Lord Chancellor of Ireland, by which he intended to have accomplished that most desirable object which you refer to.

3949. Do you see any objection to introducing a limit, and not permitting a receiver to be appointed when the debt does not exceed 150 *l.* or 200 *l.*?—I do not.

3950. Upon what rental would you fix as a limit?—If I had pen and ink, and an hour to think it over, I could make a limit. It would depend upon the relative amount of expense and of debt, by some comparison, whether or not the amount of expense is so great as to nearly equalize the debt; in that case, I would not allow the appointment of a receiver.

3951. You would give the Court the right not to appoint a receiver, taking care to hasten the sale?—My impression is, that whatever limit you put upon the Court, even though you leave the Court a discretion, if the Act of Parliament makes a limit, at the same time giving a discretion within the limit, the Court will not exercise the discretion; therefore I would have the limit provided by the Act of Parliament, whatever it is to be.

3952. You do not see, in principle, any objection to a limitation founded upon the rental; is it not a more natural test?—I have already stated to Sir James Graham to-day that I think the two elements ought to be combined in making the scale. It is more a question for a legislator than a lawyer.

3953. Do you see any objection to the clauses abolishing the costly system of suing upon the recognizance, making the surety pay upon an order of the Court after the amount of default is ascertained, instead of suing by *fieri facias* upon the recognizance?—I have read the clause in the Bill now before the Committee, and it seemed to me to be conceived in the right spirit.

3954. Do you see any objection, where estates are necessarily under the Court of Chancery, to give, in case of receivers' and creditors' suits, the same power for the beneficial management of the estate as that which is exercised by the Court of Chancery over the properties of minors and lunatics?—I do.

3955. Do you object to giving the same advantage to the tenants?—I have very great doubts about the exercise of the power of the Court of Chancery both in lunatics' and minors' cases.

3956. But still they exercise it favourably towards the tenants?—In my opinion they exercise it most injuriously to the estate.

3957. They make allowances, however, to the tenants in cases of minors and lunatics, which they do not venture to make in cases of receivers in hostile suits?—That is, I think, not exactly accurate; practically, I think, I know how it works; it is true, and to a certain extent it is not true, the Chancellor has the power, because he has power to do almost what he likes. There is a judicial power to be exercised according to judicial discretion in the case of lunatics and minors, and that power every Chancellor will exercise according to his individual view. The Chancellor may be a person, though a most excellent, a most benevolent man, who knows nothing whatever of the management of landed property; he may be a very imperfect judge of what is best for the property; I look at this question in a much wider view than I apprehend it was looked at in the cases which you refer me to. I consider it is the most mischievous thing in the country, that Estate A, with a rental of 10,000 *l.*, being under the Court of Chancery, and Estate B, just next to it, in the hands of the owner, that the tenants upon Estate A shall be dealt with in the particular manner which the owner of Estate B knows is not the best manner, but which the tenants, as tenants, think is the best. It leads to the most mischievous social consequences; I wish there never was a receiver under the Court of Chancery, because in many matters you have to depend upon the knowledge of a person who may be the best lawyer in the world, yet know nothing whatever of the management of property, and yet take great credit for acting benevolently; I speak as an Irish gentleman, possessing some land.

3958. All parties admit the existence of a receiver to be a great evil; am I to understand you to say that a receiver under the Court of Chancery has power to make the same allowances to tenants as a judicious owner may make?—In the Court of Chancery at this moment, any application that the owner of the estate consents to, the Chancellor will allow to be made.

3959. You have introduced the element of consent, which I did not mention; I am putting the case of no consent, but an estate in the Court of Chancery; do you object when an estate is brought into the Court of Chancery to allow the Chancellor to exercise the power over that estate which a judicious proprietor would exercise?—I utterly object to it; I do not think the Chancellor can be a judicious proprietor of estates he has never seen.

3960. You differ from Lord St. Leonard's; you would object to have the same power extended to the Court in cases of creditors' suits as that which is exercised in the cases of lunatics and minors, in which the Court is *in loco parentis?*—I entirely object to it.

3961. You were asked by Sir Erskine Perry whether you thought yourself quite justified in going into the question of the reconstruction of the Court of Chancery?—Yes.

3962. The words of the Commission to which your attention was directed are these. You were directed "to consider and report whether it would be desirable that the said Court," that is the Incumbered Estates Court, "should be continued either permanently or for any and for what period, and whether with any and what additions to or alterations or modifications in its powers, constitution, and procedure;" that is, what alterations or modifications should be made in the Incumbered Estates Court?—If it were continued.

3963. "Or whether the said Court," that is, for the sale of incumbered estates, "should be annexed to or its powers transferred to our Court of Chancery in Ireland;" under which of the words do you think you have power to inquire into the question of remodelling or reconstructing the Court of Chancery?—We thought it was necessarily involved in the inquiry, that we should have power to consider every change in the Court of Chancery that would be necessary to give effect to our recommendations, if we came to the conclusion that there should be a transfer of the Incumbered Estates Court to the Court of Chancery. There is a clause in the Incumbered Estates Act,—I have not it by me, and I am speaking from recollection,—which gives to the Incumbered Estates Court all the powers of a court of equity; and practically there have been within the last three weeks instances of the difficulty of carrying on business in the two Courts going on together upon the same subject-matter, each referring backwards and forwards to the other.

3964. Under which of the words did you think you had that power?—Under the words which you have read. We may have been quite wrong.

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3965. You are asked to consider and report whether the Court should be continued; you reported that it should be discontinued; then, of course, there was nothing to inquire into as to any modification?—Certainly.

3966. You were to inquire "whether any and what additions to or alterations or modifications in its powers, constitution, and procedure, or whether the said Court should be annexed to or its powers transferred to the Court of Chancery;" was not that the powers of the Incumbered Estates Court?—Then we were to consider each and every power, and also to consider whether each and every power which were powers of a court of equity should be extended to the Court of Chancery, or altered in any and what particular.

3967. *Chairman.*] Whether the Court of Chancery was fit in its then condition to receive those powers?—Yes.

3968. Mr. *Whiteside.*] Where do you get any authority to inquire into the question whether you should transfer unincumbered estates by the medium of the Court of Chancery, which you say you were to remodel?—Perhaps we had no power.

3969. The Commission says whether the said court, that is, the Incumbered Estates Court, should be transferred to the Court of Chancery; under those words, where do you find any authority to justify you in inquiring into and reporting upon the propriety of selling and transferring unincumbered property?—It is quite possible that I may be wrong; at all events, I erred in good company.

3970. *Chairman.*] I believe we all concurred in the view, that it was necessary to consider the state and condition of the Court of Chancery with a view to see whether it was fit to receive those new powers?—Yes.

3971. Mr. *Whiteside.*] From your great knowledge of the law and practice of the Court of Chancery since its constitution, has any such change ever been proposed as that of making it what some of the witnesses have described as the general conveyancing court of the country?—Never.

3972. That, therefore, is a recommendation of a very large and novel character?—Decidedly.

3973. And is one of which the public had a right to be fully aware that you were about entering into upon that investigation?—I do not know about that; I may say that the Court of Chancery at present is the great conveyancer of the country; the difference between what would be under our recommendation and what it is, is more technical than real. At present, the Court of Chancery does not act upon the property, it acts upon the person who owns the property; it compels him to convey, and compels another person to take from him; it does not assure the title to the man that it compels to take, and that seems, I think, to be rather short of natural justice.

3974. In reference to this important question of remodelling the Court of Chancery, I see that you asked the Masters about the quantity of business in their offices, but I do not find that any questions were put to the Master of the Rolls, the Masters, or to any functionaries of the Court of Chancery, as to the proposal to convert the Court of Chancery into a place for the transfer of unincumbered estates?—The questions are in the Appendix to the Report, and of course they will speak for themselves.

3975. Do you recollect whether you asked any of the functionaries of the Court of Chancery questions upon that important matter?—I do not. The questions are all in writing. There were upon that Commission the actual Chancellor, the ex-Chancellor, and the Chief Judge of a common law court, who had vast experience in the Court of Chancery, and there was myself who had been there some years, and had practice there; and it was possible that we were vain enough to think that the Chancellor and Mr. Blackburne knew as much about it as any Masters in Chancery.

3976. You put questions to 11 barristers; did you put your questions to the leading barristers in practice at the Chancery bar?—No.

3977. To any of them?—To some of them. I think you will find some of the gentlemen's names.

3978. I refer to Mr. Francis Fitzgerald, Mr. Martley, and Mr. Christian; I do not find that to any of the leading members of the Bar you addressed any questions?—That is very true, but it was by accident that we did not. I may state that during the progress of that inquiry I was myself the Attorney-general, when the Commission was issued, and therefore knew something about what was intended;

intended; I may tell you that with the three gentlemen whom you have named I had many conversations upon subjects involved in our inquiry; and I endeavoured to acquire as much knowledge as I could by every human exertion that I could make.

3979. We are only speaking here of the document laid before the Committee; I am asking, for my information, whether you sent any questions to the leading practitioners within the bar of the Court of Chancery?—I cannot say we did to the leading practitioners.

3980. Did you send questions to some of the eminent men?—Yes.

3981. *Chairman.*] I believe in the selection of the names the Commissioners were very anxious to fix upon gentlemen who had great practical experience in the Incumbered Estates Court, the Court of Chancery, and the Master's Offices?—That was the rule by which we went. With respect to the names that have been mentioned, I believe it would be impossible to speak too highly of them. They are gentlemen to whom everybody would defer; and one other gentleman who has not been named, whose evidence I was determined to have had, but was prevented by an accident,—I mean Mr. Hughes; we omitted those gentlemen from the list because we knew they did not practise in the Incumbered Estates Court; our object was to get information from those who had a knowledge of that court, and might have in their own minds a settled notion about the relative merits of the two courts.

3982. I find that you selected five Queen's counsel and six members of the junior Bar, all being parties having practice in the Incumbered Estates Court, the Court of Chancery, and the Master's Offices?—Yes.

3983. Mr. *Whiteside.*] I believe I am accurate in saying that you took the opinion of 11 gentlemen at the bar upon the question of the propriety of transferring the unincumbered estates through the medium of the Court of Chancery, and giving a Parliamentary title?—Yes.

3984. With regard to their evidence, have you observed that Mr. Longfield, one of those gentlemen, does not appear to have answered that question?—It is quite possible; I would suggest, that all that will appear upon the evidence. I cannot add to what appears there, and it is of no use asking me the question.

3985. According to your recollection, out of the 11, did more than four give a distinct answer in favour of the scheme?—I have not the least recollection.

3986. Do you think if that be accurate upon a question involving a great fundamental change in the mode of conveying land through the medium of the Court of Chancery, supposing we were governed by the Report, that would be a sufficient amount of evidence upon which to adopt that change?—Surely it must strike you, that when I signed the Report I thought so.

3987. Are you not of opinion that uniformity of legislation, where it is practicable, should be adopted for the two countries?—Yes, most decidedly.

3988. Are you aware that there is a Commission sitting upon the question of Registration of Tithes, with a view to enable parties to transfer their estates, or to establish their titles before a certain tribunal, and then to convey accordingly?—I am aware that there is such a Commission. That was one of the matters upon which I took the best means I could to acquire information before I made up my mind; but I could not get certain information. I do not like to refer to names, but upon the best information I could obtain, I found it was hoped that at the end of 100 years the titles in England would be put in something like shape. Whether I was rightly or wrongly informed about it I do not know, but I thought that what we were doing would facilitate any measure which might hereafter be advisable; and therefore I thought we were meeting a great present emergency. I should be very willing to accept something better; but I had the satisfaction of meeting the Solicitor-general for England twice in the investigations, and we had the advantage of hearing something from him upon these subjects.

3989. My question is this. If a measure be passed in reference to England which is applicable to Ireland, so far as the introduction of a new principle is concerned, is it not consistent with wise legislation to have a common principle for the two countries?—Clearly.

3990. You did not hear that the Report would not be prepared for a couple of years?—I did not. I have looked into these matters, and of course everybody having an interest in the country must have looked into them; it is a matter of the deepest importance; I have spoken to everybody I could reach upon the subject. The Commission did me the honour to send me queries, which I had

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to consider and answer. I have heard that we shall want the aid of most eminent persons, namely, engineers; for I understand the country is to be mapped out in a particular way; and then you are to take out of your Board the bit of land that you want. The operation seems to me one of the most laborious that ever was conceived, but one of the best if it can be carried out. It is manifestly a slow operation, and I do not like waiting for good that may happen after I am dead; I would rather see some good done in my lifetime than anticipate good a hundred years hence. If there be a present measure in progress, which will be applicable to Ireland, I desire that it should be carried out, though I believe there is no person at the Irish Bar more strongly in favour of an assimilation of legislation.

3991. The spirit of the recommendation in the Report is to introduce a principle which never has existed heretofore in Ireland or in England. Is not conferring a Parliamentary title upon unincumbered property a new principle?—Yes.

3992. Do you agree with the opinion of Dr. Longfield, who said, in answer to a question which I put to him, that an attorney who obtains a conveyance from his client, or a guardian who obtains a conveyance from his ward, who has just come of age, is never to be impeached, provided the sale is made through the medium of the Court of Chancery, conferring a Parliamentary title?—Is it certain that Dr. Longfield said so? I will give no such opinion.

3993. Supposing Mr. John Sadleir, while acting as attorney for a party in the sale of estates, availed himself of his knowledge as an attorney, and bought the estate of his client, would you say that having got a Parliamentary title, that could not be set aside in the Court of Chancery?—You tell me beforehand that the point has never been decided; I do not believe it has been decided; no such question has been raised.

3994. I will read to you a question which I put to Dr. Longfield: "With reference to fraudulent sales, is not the dealing with fraudulent sales a question of equity? Yes.—Under this jurisdiction, if a guardian bought an estate from a ward just come of age, and got the conveyance under your bit of parchment, does not that prevent for ever the possibility of its being rectified? I think so.—And annihilates that great branch of equity? Yes, unless you come personally against the party"?—I cannot say that I subscribe to that doctrine.

3995. Would not this Committee be called upon to revolutionise the law of the Court of Chancery in many of its most important branches, if they adopted the principle, that no sale could be got rid of if once a person got a bit of paper conferring a Parliamentary title?—My impression upon the whole of that subject is this, that there is great difficulty while you have the Incumbered Estates Court as a separate jurisdiction, all of which will be swept away when it is a part of the Court of Chancery. An illustration more strongly confirming my opinion in reference to the transfer of the jurisdiction cannot exist than in the question which you have propounded to me. My opinion is, that if it becomes a branch of the Court of Chancery, no such consequence ever can arise.

3996. Do you mean to say, without any words being added to the Act of Parliament upon which Dr. Longfield gave that opinion, that in another court, which must construe the Act of Parliament according to its words, a different interpretation would be put upon it than he says the words bear?—If Dr. Longfield's interpretation of those words is right, no matter what the court is, the court must give that interpretation to them.

3997. If it be accurate, is it not a most alarming principle to introduce into our law, that fraudulent sales can never be set aside?—Yes. My opinion is this, that it is the first principle of the law, that fraud vitiates everything as between the parties to the fraud. I cannot conceive that any law will ever be passed that either was intended or will receive the construction to say that frauds between A and B shall be lawful. But a fraud, though it cannot be lawful, yet may be successful. For example, in the case put, it would strike me that, with the greatest possible deference for Dr. Longfield's opinion, I would rather have the jurisdiction of a court of equity, where that opinion could be appealed from if he entertained it. I would wish it to be placed in the position of an appeal to the House of Lords, where it would receive a judicial interpretation as binding as an Act of Parliament. It would appear to me that as between the parties to a fraud, the court would act upon the man who had got the estate; the court would say, "You have got a perfect title; you have got as complete a title as any man ever had; but you have been guilty of a fraud in getting that title, and I will make you, because

you

you are a fraudulent man, reconvey the estate to the man you have cheated out of it."

3998. Have you had any case in the Court of Chancery in which that has been done?—No.

3999. When I speak of fraud, do you understand me to apply the meaning which the Court of Chancery attaches to the word fraud to the relation that subsists between parties; for instance, an attorney buying in the Incumbered Estates Court the estate of his client?—That point I believe as nearly as possible has been decided. I will tell you what has been decided, to my great surprise, by an appeal from one Commissioner to the three Commissioners. They decided as Judges one thing, and the Privy Council reversed their decision upon the point I am about to state. The agent of an estate, having the knowledge that an agent has, walked into their court, and stated, "I will purchase this estate; but now, though I am agent, I discharge myself from the agency, and I come here to purchase it;" and he did purchase it. The three Commissioners, amongst them Dr. Longfield (which may account for his opinion) held, that the purchase was a valid one; first, Mr. Hargreave decided that it was a lawful transaction, and the full court on appeal affirmed his decision, and they refused, at the instance of the persons interested in the estate, to set the sale aside, although he bought it at a gross under-value. By an appeal from the Commissioners, it was brought to the Privy Council, where there were Chancery practitioners (Mr. Blackburne I know was startled at the case), and the Privy Council reversed it at once.

4000. *Chairman.*] Was that Kane's case?—Yes.

4001. In that case it was not an agent, but a receiver, and he stated in the presence of Mr. Hargreave, who presided, that he attended there not as a receiver, but with a view to buy the estate himself, and he bought it?—Yes.

4002. Mr. *Henley.*] That was reversed?—Yes.

4003. Mr. *Whiteside.*] On what ground was it reversed?—On the ground that it was a fraud in equity, the man knowing the condition of the estate. It went upon one of the oldest recognised doctrines of the Court of Equity. Lord St. Leonards decided the first case of a class, and he carried it to this length, which I take to be law. It was a decision, like all of his, standing upon the highest principles. There was an estate of a noble family in Ireland upon which a lady had a large jointure; the estate was incumbered, and as she was not receiving her jointure regularly, she said to the gentleman who was the receiver, "If you are in a condition to give the most satisfactory security, you shall pay me 400 *l.* a year, and I will sell you my jointure." (I think the jointure was 1,000 *l.*) It was purchased in that way, and the creditors insisted that the transaction was contrary to the principles of a court of equity. There was a suit before Sir Edward Sugden. The creditors insisted that the whole proceeding should be set aside, and the receiver and the lady came, and they both insisted that it should not be set aside. The lady had sold the jointure, and bargained for a satisfactory security; and the gentleman who had bought it said, "I am under obligations to keep up insurances, and I have given security to the amount of 10,000 *l.*" Sir Edward Sugden said, "You are in a position which disables you from making the purchase;" and he declared the purchase to be a trust for the creditors. He took great precautions to do justice to everybody.

4004. Mr. *Henley.*] You said that the Privy Council set the judgment of the Incumbered Estates Commissioners aside; what would have been the case if the estate had passed to a third party?—They could not have touched it.

4005. *Chairman.*] If it had passed to a third party without notice?—Yes. In order that you may have at least my view, I would say that if there had been no Incumbered Estates Court, and if the transaction had been under the old jurisdiction, and the sale in the Court of Chancery under the same circumstances, and the estate had passed into the hands of third persons, it could not have been touched, because the same rule, if the purchase is for value without notice, in both cases would prevail.

4006. Mr. *Whiteside.*] Did you ever see the observations of Lord St. Leonards upon the effect of the Incumbered Estates Act in reference to fraudulent sales?—I never did.

4007. Is there not a very serious question involved in the case which I put to you, of an attorney purchasing the estate of his client and in the case which I put to Dr. Longford, of a guardian purchasing the estate of his ward the day after he

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he came of age?—Those are very different questions in the view of a court of equity.

4008. Do you hold the opinion that all the sales which have taken place in Ireland in the Incumbered Estates Court, where attorneys, or parties standing in the relation of attorneys, have purchased, are liable to be questioned in the Court of Chancery?—When you show me a particular case I will be able to give you an opinion upon it. I can give you no general opinion upon all the sales which have taken place in the Incumbered Estates Court.

4009. Do not you admit that it is a very important consideration?—Yes; I said yesterday that my impression about the responsibility was so great that I should be very sorry to undertake it.

4010. Have you ever considered the question as to whether fraudulent sales can, after a Parliamentary title has been obtained, be disturbed?—I have never known the question raised, that I am aware of.

4011. In reference to a matter which you very properly introduced yesterday, I presume you would agree with the opinion of Sir John Romilly, that when an uncontested case comes before a judge he is more embarrassed than with any other branch of his jurisdiction?—I am sure it must be so. I have never had to consider a case as a judge, and he is the person to answer, and not me. I consider all purchases in the Incumbered Estates Court are uncontested; I will add to that, that all the sales, looking at it from the same point, in the Court of Chancery are uncontested. I will tell you where the difference begins, and what forms the distinction. In the Court of Chancery, the contest as to title is not between any parties in the cause, but it is between the buyer and the seller when it comes to the last point after the sale is made. As the Court of Chancery does not give a perfect title, and the next day after the Court of Chancery has sold an estate to a man he may be turned out, the purchaser has to take the same precautions as if he purchased out of the Court of Chancery. The statutable provision in the Incumbered Estates Court relieves the purchaser from any inquiry upon the subject, if he is a fair, honest man. The intent of the Act, and the policy of the Act, were, that when once he has got the property, and paid his money, he shall hold by statute.

4012. Do you hold the opinion, that a mortgagee inquiring into the title before he lends 20,000 *l.* upon it, after filing a petition to sell that estate in the Incumbered Estates Court stands in the same position as a person going into the Court of Chancery would stand who owes nothing, and who desires to dispose of an unincumbered estate of which he says he is the owner in fee-simple?—My impression is, that the only difference would be that the mortgagee in that case would be even more solicitous to pass a bad title; he would want to get his 20,000 *l.*, and he would do everything he could to palm off a bad title.

4013. Does anybody lend money in Ireland without getting an investigation of the title, and the opinion of a lawyer that he may lend his money with safety; is not that the general rule?—Yes; but the number of cases in which the contrary has taken place I think would surprise anybody; it is the general rule.

4014. In the course of a careful investigation, does not he obtain the title deeds?—Very often not.

4015. And very often he does?—Yes; in England you must remember that he is liable to lose his priority, but in Ireland there is no such necessity, because there is a registry.

4016. He gets the register searches looked into carefully?—Yes, in the ordinary course of business.

4017. Is not it a different case from the case of a man whose title has never been looked into by a lender, and whose interest impels him to look into the title upon which he lends his money?—No doubt; every body who consults competent counsel before he lends his money, or purchases an estate, takes all human precaution to be sure that he is getting an equivalent in return for it; that is quite clear; I cannot entertain a doubt that no Government would venture to appoint persons to execute this most important duty who were not entirely competent to do it; I cannot doubt if proper judges are appointed for the administration of this Act they will do every thing that the most skilful counsel would do; they will be appointed from persons as competent as any Commissioner could be; I am one of those who think that there is no earthly obligation higher than that which is imposed upon a judge; and my experience is, that judges are fully sensible of it.

4018. I am

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4018. I am not speaking of the persons, but of the thing to be done. In regard to the sale of unincumbered property, the thing to be done is to sell by the authority of the Vice-Chancellors?—Certainly.

4019. It is entirely to be done between him and the petitioner who desires the sale?—Surely; and the man who is to buy it.

4020. Am I to understand you to confine this right of conveying unincumbered property with a Parliamentary title to a case in which there is a contract for the sale of a portion, or the whole of the estate between the owner and the intended buyer?—I can hardly imagine any other case.

4021. Do you contemplate that it would be limited by the Act to the particular case of the owner of unincumbered property contracting with the intended purchaser to buy a part or the whole of his property?—I cannot comprehend any other case. I do not imagine that our Report can be considered as recommending that a man is to go into any court, and call upon the court to pronounce that his title is an unincumbered title. Our Report means a very different thing; if a man wants to sell his estate, I cannot but think that the purchaser will be just as anxious to get a good title, save in the case I put yesterday, where, from the great anxiety on the part of a purchaser to get the estate, he might be disposed to act unfairly for the purpose of getting it; but in the great majority of cases I take it that the purchaser would be anxious to see that he had a good title.

4022. Does that apply only in cases where a person is about to sell a portion of his estate?—So I understand.

4023. Then the owner of 1,000 acres wishing to sell 500 acres, will have a Parliamentary title as to one 500, and no Parliamentary title as to the other 500 acres which he retains?—Clearly. I cannot say that it may not be worked out in practice. I think any man will get a Parliamentary title for the whole estate, although he will only sell part; he may contract, and I dare say in practice this will constantly happen, that he will contract to sell his whole estate; and in selling the whole, the deed might be so drawn as to remit half of it back upon a use to himself.

4024. Am I to understand you to say that the Parliamentary title is to be confined to the case I have put?—Yes.

4025. Then, ordinarily speaking, the owner of the estate would have a Parliamentary title to the part he sold to the purchaser, but no Parliamentary title, except by the contrivance you have mentioned, to the part that remained in his possession?—Yes; but is the purchaser, and not the original owner, who would have such title.

4026. Would it not be better to have the system carried out which is aimed at in England, which gives a perfect Parliamentary title to the estate?—That, of course, is a truism.

4027. Did you ascertain what number, or form any estimate of the number of abstracts of title which you expect the two Vice-Chancellors, in addition to all their other business, will have to read?—It is totally impossible to form even a guess about it.

4028. Did you ascertain the number of deeds which are registered in the registry of deeds in Ireland?—No.

4029. Would you be surprised to hear that there are 10,000?—No.

4030. Supposing the Incumbered Estates Court is abolished, and there are 2,000 or 3,000 abstracts of title a year necessary to be read, is it your opinion that those two or three judges will be able to read with their own eyes those 2,000 or 3,000 abstracts, if they are discharging their duties as Vice-Chancellors in the Court of Chancery?—It entirely depends upon the length of the abstracts.

4031. From your experience of abstracts, taking the ordinary business-like sense of the word, is it your opinion that those two Vice-Chancellors, besides transacting all the business of the court efficiently and promptly, so as not to allow any arrears, as the Master of the Rolls does in his court, can read and advise upon that number of abstracts?—The proportion of sales will be found, I dare say, whatever the number may be, to be to a great extent indeed of very short interests, the abstracts of which ought not to occupy two sheets of paper; that is frequently the case in the Incumbered Estates Court, and it will still be more the case in the Court of Chancery. In the sale of a lease, for example, you make it a condition in selling the property, and nobody thinks of selling a lease without one, that you shall not ask for the landlord's title. The lease is made to yourself or your father, and I take it that five minutes would dispose of the whole business

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with any competent man; he would read the lease, and he would see what the searches were directly; that is one of a great class. On the other hand the Judge would have a number of cases, very likely, in which the title would be deduced first from the patent, then begin with the registry, and he would have to go through fines and recoveries, and settlements, and so on.

4032. He would have the ordinary run of cases brought before him?—Yes.

4033. Supposing the Incumbered Estates Court were abolished, and all the arrears were got rid of in the Court of Chancery, and the court undertook the transfer of unincumbered estates, do you think that two Vice-Chancellors would be equal to the performance of those duties?—I concurred in the recommendation, that if two were not sufficient, more should be got.

4034. There is this statement in the Report, "The amount and state of the business in the Incumbered Estates Court demonstrate that it would be necessary, if that court were continued, to make considerable alterations. In the first place, it should be removed from its present situation, and the quantity of business remaining undisposed of is such, that, in order to carry it on with safety and with reasonable despatch, it would be absolutely necessary to provide an additional staff, probably judicial, certainly ministerial." If the Incumbered Estates Court now were permitted to be continued, you recommend an additional staff, "probably judicial, certainly ministerial"?—Certainly.

4035. There is in the Incumbered Estates Court three Commissioners, and a staff of 30 clerks?—Yes.

4036. To enable them merely to deal with incumbered estates, you propose an additional staff; is that so?—We did propose that the whole of that staff, or such a portion of it as could be advantageously transferred, should be added to the Court of Chancery, and we did propose, in addition to that, the creation of a number of new officers who have never acted before; and in my contemplation, certainly, I intended, so far as I was concerned, that those officers should be officers of very high capacity, provided with what we considered good salaries for them; we did think that those officers would be able to discharge, under the superintendence of the Vice-Chancellors, a very large portion of the work.

4037. I am speaking of your report; supposing you had reported that the Incumbered Estates Court should be continued, you say, if this Court is continued, it will be necessary to make considerable alterations. "In the first place it should be removed from its present situation; and the quantity of business remaining undisposed of is such, that in order to carry it on with safety and with reasonable despatch, it would be absolutely necessary to provide an additional staff, probably judicial, certainly ministerial"?—Yes.

4038. That is, in addition to the three Commissioners you would require additional judicial strength, and in addition to the 30 clerks, additional ministerial strength?—I think it is very probable that it would be so.

4039. Then if that be so, if you require five Masters in Chancery and the Master of the Rolls to transact the business of the Court as it now exists, it being the case, as is proved by witnesses from the Court of Chancery, that every reform of that Court has added materially to the amount of small business to be done in the Court, will you tell us how two officers will do not only the business of the Court of Chancery, but the future business of the Incumbered Estates Court, together with the transfer of all unincumbered property which may be brought into the Court?—My impression is, if some of the recommendations be carried out, that the proceedings in Chancery will diminish, not the amount of causes, but the amount of business in causes, to an enormous extent; I use the word deliberately, as the result of my experience in that Court; and this would leave a great deal more time at the disposal of those who are now discharging those functions than they have at present; I will make myself more intelligible if you will allow me, and present the case in another point of view; I will assume that we have nothing to do with the Incumbered Estates Court, that that Court is not under consideration; I will suppose, instead of that, that we have simply the consideration of the Court of Chancery; I conceive that by the abolition of the Masters' Offices and Reports and Exceptions, and appeal after appeal, which has led to such enormous delay, expense, and other mischiefs, the court would do the work with a very diminished staff indeed.

4040. In reference to cases under sec. 15, which we are informed constitute a great portion of the Master's business, at present there are no reports, and he is enabled to do as much work as he would by reason of the very sensible reforms

reforms which you have suggested having been carried out with reference to that class of business, but still his time is fully employed?—Yes.

4041. Assuming that your judicious view be adopted as to abolishing reports in the other cases in which they are still required, do you contemplate that, with all the small business that every reform brings into the court, the staff now existing can transact that business?—I am not at all confident that it will, but I am quite confident, if it does not, it will be the duty of the Executive to add another Judge, and if the business multiplies, to add two.

4042. Allow me call your attention to this passage in the Report; it is very important in reference to the constitution of the Incumbered Estates Court: "The amount of the business was originally so great, and the staff employed so inadequate, as to cause the existing arrear. The number of cases not yet wound up is 1,633, being nearly one-half of the entire number brought into the court." You stated yesterday, truly and accurately, that the reports and decrees in the old suits in the Court of Chancery enabled the Commissioners of the Incumbered Estates Court to proceed rapidly at first?—It struck me so, and it strikes me so still.

4043. With the advantage of those reports and decrees, which enabled them to proceed rapidly at first, it appears that they have only transacted about half of their work?—So it would appear.

4044. If that be so, and there remains this great quantity of work still to be done, does not it raise an additional doubt in your mind as to the proposed staff being quite sufficient to complete the work which they have been unable to perform with a much larger staff?—The work must be divided into two parts, namely, the arrears and the current work. In reference to the arrears, there is considerable difficulty, but there is only one that I practically feel in reference to the current work. If you refer to the Report, you will find that the diminution of the business has been steady. There has been a drop down from something beyond 1,000 cases in the first year to something like 400 or 500 in the last. It appears that a great rush was made to the new tribunal at first, and as soon as that is wiped off, it would certainly strike me that the process of selling estates would considerably diminish, and I may add this, it is my belief that the temporary arrangements which keep the court alive, have the effect of keeping a larger amount of business in existence, because the public is not yet sure whether or not they will have the advantage of a Parliamentary title, and at each crisis, as the fate of the Incumbered Estates Court is about to be determined, I apprehend there is something of a rush to present petitions, and then they let them lie dormant. I rather think it will be found that petitions latterly presented, lie dormant there, to see what the result will be. If the court continues, they will act upon them; but if the whole thing is swept away by the Board, they will not act upon them, but they will go into the Court of Chancery. You are asking me questions about things upon which there is no possibility of arriving at a certain conclusion.

4045. As to the arrears, I understand that you have now changed your views from what is stated in the Report; that is to say, you do not propose to throw the arrears into the Court of Chancery upon the same persons who are to perform the future business?—I propose to throw the arrears into the Court of Chancery.

4046. But you do not propose to have the arrears disposed of by the same persons who are to perform the accruing business of the court?—As to the sale of property, and as to the ascertainment of title, the determination that the title is a good title I propose to throw upon the Vice-Chancellors.

4047. At page 13 of the Report, you say, "In 307 only of these 1,633 cases, sales have taken place, and the settling of the final schedule, which is the most important stage, in only 216; so that, irrespective of the accruing business, there remain 1,300 cases in which sales are yet to take place, and 1,400 cases in which final schedules have not yet been settled, leaving about one-third of the business undisposed of. The effect of this pressure in retarding the despatch of business may be estimated from the fact shown by the returns, that the average period which now elapses between the presenting of a petition and the settlement of the final schedule is about three years:" I want to know accurately what you intend or contemplate at present, contra-distinguished from the recommendation in your Report, to do with that arrear?—What I propose to do with that arrear is, in so far as concerns the distribution of the funds and the working out of the proceedings of the court subsequent to the sales, that the services of the Masters should be continued until that is completed, and until the arrears of that sort are altogether

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altogether got rid of; but as to the sales, as to the ascertainment of title, and as to everything that is necessary to confer a Parliamentary title, that business will be transacted by the Superior Judges of the Court; and if two are not found sufficient, I presume the Executive, if Parliament gives them the power, will take care that sufficient force is obtained for the purpose.

4048. Does not that create that very evil which you pointed out yesterday would arise whenever two persons, instead of one, were called upon to deal with the sale, and with the proceeds of an estate when sold; would not that give the investigation of title to one person, and the ascertainment of the rights of the parties, and the distribution of the fund to another?—The evil is principally causing delay, and not as causing actual loss, mischief, or injustice; it is an evil in causing delay, and originating expense. My belief is, that a more perfect system human ingenuity never devised than the whole system of the Court of Chancery; but before the recent reforms it became so cumbrous and so expensive, that the evils incident to it almost counterbalanced the good.

4049. In the case of those arrears, one man has to investigate the title, and another man to ascertain the right of the parties, and distribute the fund *quoad* the arrears?—That is just the difference; when the property has been sold by the Commissioners in the Incumbered Estates' Court they have ascertained that the title is a good one, and they think a Parliamentary title ought to be conferred, and, acting upon that, they have sold the estate. There yet remains the very important duty to be discharged of distributing the proceeds of that sale; that is the duty of the Masters at this moment, the very duty they are discharging in the Court of Chancery; and, as they are eminently qualified to perform that duty, I give it to them as to the arrears. As to the cases in which a sale has not taken place, of course I put them upon the new system, and carry them out upon the new system.

4050. The cases which are before the Incumbered Estates' Court, which they had not touched or broken in upon, you would transfer to the Vice-Chancellors, in their integrity?—Yes.

4051. But in the cases where the estates have been sold, you would transfer the distribution of the funds to the Masters?—Yes.

4052. What would you do with the staff of the Incumbered Estates Court; would you divide it or not?—That is a matter of detail; it is one of the things which will be determined by those who are to carry out our recommendations; it will rest with the judges of the court, whether they would avail themselves of their assistance in that respect.

4053. The Masters of the Court have informed the Committee that their staff is inadequate at this moment for the transaction of their own business; do you contemplate, with the business that you would divide or parcel out amongst the four Masters, that you would likewise parcel out the staff of the Incumbered Estates' Court amongst them?—My primary notion is, as long as a man is able to work, I never would willingly let him have the public money without working for it. That being so, I would make every man in the Court of Chancery, and every man in the Incumbered Estates Court, work. I would put them to use in the way of increasing the staff and accomplishing the business. I may add this: I think it would appear (I speak from my own knowledge) that some of the officers in the Incumbered Estates' Court have executed their duties in the most distinguished manner, and therefore you would find them ready made, with all their experience, and it would be a great boon to give a Judge such experienced persons to assist him, men who have already shown such distinguished capacity.

4054. Would you take power to allocate the officers of the Court according as they might be wanted?—You will find, in the Report of the Commissioners, it is recommended that the Lord Chancellor shall have power to distribute those officers in such a way as he thinks proper.

4555. If you divide the arrears amongst the Masters in the way you have described, do you contemplate distributing the officers of the Incumbered Estates Court in like manner?—I contemplate this, not saying to a man you shall hold this office or that office, but you shall go into that place and do everything which you are bid to do. I do not propose to give any man an office, and I believe I am speaking the views of the Commissioners. We never thought of creating those persons as officers in certain places, but taking them as soldiers under the command of a general, to do whatever they are bid.

4056. I am not asking you with respect to what is in the Report, because that

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is intelligible; I am asking you with respect to your last suggestion, as to disposing of the arrears through the instrumentality of the Masters; do you intend to distribute amongst the Masters the staff of the Incumbered Estates Court?—Until a man sat down to make a plan it would be difficult to say; but my notion was, that every one of those persons should be made the best use of for the public interest.

4057. Did you ascertain whether there was any accommodation for the Vice-Chancellors?—There is no accommodation; when I was Attorney-general, the Bar did me the honour to present an address to me upon the subject. I received that address, and when I received it, it was my duty to communicate with the Government before I answered it. I did communicate with the Government, and I received the authority of the Government to say that every possible exertion would be made to redress the evil complained of. I know there was no exertion that could be made that was not made to provide an appropriate place. It came to a Treasury difficulty, whether the Treasury would advance the money to build courts, and the Treasury proposed to the benchers to advance money. The Treasury said, It is a strong thing to ask us to spend 10,000 *l.* or 15,000 *l.* for a court which may terminate next summer. We could get, I may state, no accommodation ready made to our hand close to the Four Courts; we were willing to take any number of houses, but they were not to be had. The Treasury thought it an unreasonable thing to erect the great number of buildings which would have been necessary, until the final arrangement was made. There have been since I came to the Bar, over and over again, changes in the law, which have rendered it necessary to resort to temporary expedients, till buildings could be got for the people to go into.

4058. Are there any courts for the Vice-Chancellors?—No.

4059. Mr. *De Vere.*] Is there space in the Four Courts for whatever may be required?—The way it stands is this: the benchers have a piece of ground that would be adequate, in our opinion, for the erection of a suitable court, but not quite sufficient for the accommodation of the officers; and I may say that the benchers did offer to give the ground, and are perfectly willing to give the ground, and I cannot suppose that the Government, the moment that anything definitive is settled, will stop one moment in making the necessary arrangements.

4060. *Chairman.*] That ground immediately adjoins the courts?—Yes, it is at present inclosed within the area of the Four Courts; it is a part of the ground at present unoccupied, but inclosed. The Government and the benchers generally deal together upon amicable terms; they sometimes do a little for us, and we do something for them; we have given them all the ground.

4061. Was not this the proposal of the Treasury, You build the courts, and we will rent them from you?—They said, You have so much money; if you will build the courts, we will take a lease of them. We said, If you will take the lease in perpetuity, that will do; but we will not build at an expense of 12,000 *l.* for a two years' lease, the period of the existence of the Incumbered Estates Court.

4062. Mr. *Whiteside.*] There is no court for the officers at present in existence?—There is no doubt about that.

4063. Mr. *Herbert.*] Are the Committee to understand that the benchers at present would build the court, if the Government were prepared to take a lease in perpetuity?—I am not at liberty to answer for the benchers; but I will tell you what I do believe, that if the Government would pay them a rent of 5 per cent. upon their outlay, the Benchers would build to the extent of anything short of 40,000 *l.* I think they would be very glad to have an investment at 5 per cent., inasmuch as they are now getting but 3.

4064. Mr. *Whiteside.*] The buildings are hereafter to be erected?—They are.

4065. Upon the subject of the fees in the Court, you have recommended that power be given to abolish them; recommendation 15, is, "That stamps and fees upon all proceedings in Chancery should be abolished or reduced so much, as not to interfere with the dispatch of business, or the publicity of the proceedings;" do you approve of the principle which is contained in the Attorney-general's Bill, if you have seen it, of deducting a per-centage from the amounts of all sales in the Court of Chancery, with the view of meeting the expenses of the Court?—Upon the whole, that is a fair thing; nobody is forced to come into the court if he does not like; I think it applies particularly to the sales of unincumbered property, inasmuch as it is the owner's voluntary act. I think it is perfectly just to impose

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impose upon him a tax which he need not pay, or must pay, according as he thinks it is for his own advantage.

4066. Would it be necessary to make people pay for the dispatch of business by suitors in Chancery?—I am clearly of opinion that no tax ought to be put on which would have that effect.

4067. What you mention would be just, if the court existed only for the sale of estates, but I am speaking of the Court of Chancery having all the business of a court of equity?—So am I; we never contemplated that a proprietor should be taxed one single farthing for the general business of the court of equity.

4068. In reference to the general business of the court, the recommendation is, "That stamps and fees upon all proceedings in Chancery should be abolished, or reduced so much as not to interfere with the dispatch of business, or the publicity of the proceedings"?—It was upon a totally different ground that we came to that conclusion.

4069. Is not it a great question, and one of vast consequence, whether fees and stamps should be abolished in courts of justice?—Very.

4070. Is not it a very large question?—Certainly.

4071. Is it possible to abolish fees and stamps in the Court of Chancery, and retain them in the county court?—I am unable to answer that question.

4072. I am asking you upon principle, if you abolish them in one court, whether they ought not to be abolished in every court of the like nature?—I think it is a fair argument. I am speaking now of those things practically. I will take the case of our own Assistant Barrister's Court, there is a small stamp for transacting the business. The word "fee" has been used, but there is hardly a fee in the Court of Chancery that is not a stamp. By a series of Acts of Parliament all the fees have been converted into stamps; but I believe the stamps were never intended to be put on for a larger amount of fees. The expense in the Assistant Barrister's Court is as it ought to be, very small, and little more than enough to make it an additional proof of authenticity; but the objects we had in view were of the very largest kind with respect to the question of title. We considered whether as a national question it was of great importance to get rid of the enormous litigation that takes place about title, and whether the nation, looking at it in all its relations, would not benefit.

4073. Does not your recommendation refer to stamps and fees upon equity causes, and all the proceedings in the Court of Chancery?—A cause may be a cause about title; there might be a simple cause with respect to the execution of a power, or something of that kind; but it would be impossible to distinguish, at least I am not aware how we could distinguish, between the causes. You can rarely tell in a cause when a question of title will arise; it seldom can be *à priori* determined. You are forced to have a general rule, although in the general rule you take in a number of particular cases which do not fall within the principle that gave rise to the rule.

4074. Does not the recommendation refer to all proceedings in the Court of Chancery?—Yes.

4075. Although it applies to a court of the same nature as the Court of Chancery in England, where the same stamps exist, does not a poor man pay in proportion to the recovery of a debt of 5 *s.* a very considerable fee in the county court?—I think the answer to that question is a very simple one; I believe that the scale is not graduated by the amount of the debt at all.

4076. Supposing a poor man to recover 5*s.* in the county court, does not he pay a very considerable fee in proportion to the amount?—I believe if he recovers 40 *l.* he pays the same.

4077. *Chairman.*] Or 200 *l.*?—Yes; it is not a matter of principle; it is an arbitrary rule fixed for convenience.

4078. Mr. *Whiteside.*] I presume from what you have stated, that you dissent from the opinion expressed by the Master of the Rolls for Ireland, about transferring the investigation of titles to able barristers under the Court of Chancery to report upon the title; he seems to think that that might be an advantage?—I do not dissent from the Master of the Rolls about that; I would not deprive a Judge in Ireland of any benefit which a Judge in England has; if he chose in any particular case to have, before he decided on a title, the opinion of a conveyancer, I would permit him to do so.

4079. But generally speaking, you would not refer it to a barrister to decide upon the title?—I do not give any opinion about that; I would leave it optional with

with the Judge whether he would examine every title with his own eyes. I suppose nobody can doubt if the title had been examined by a conveyancer, that it would be an advantage. I must beg of you to regard this question practically; and I will give you an instance, that is the best thing: there now is a case arising under a trust in the Court of Chancery, and I was consulted about the trust, I went into the court, and in the progress of the case there was a good deal of trouble and litigation, and the Master of the Rolls said; "As to lending out this trust money, I see that Mr. Brewster's opinion is not favourable to the title. Whenever you bring me his opinion favourable to the title, I will lend out the trust money." He will have but little trouble after I shall have fully examined the title, and he will be able to determine in half an hour what should be done.

Right Hon. *A. Brewster.*

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4080. Do you subscribe to this opinion of the Master of the Rolls for Ireland; "I should be disposed myself for the security of the public, to say, that instead of casting the duty upon the Judge, who cannot, in my opinion, perform it properly, I should be much more disposed to attach to each court a counsel of eminence, appointed by some such mode as to secure a proper appointment. I would throw the whole responsibility of granting a Parliamentary title upon him, who would have his mornings to devote to reading the abstracts"?—I must have, according to my view, a Judge of high station.

4081. To do it with his own eyes?—Yes.

Jovis, 22° die Maii, 1856.

MEMBERS PRESENT.

Mr. Attorney-General for Ireland.	Mr. Ellice.
Mr. Whiteside.	Mr. Henley.
Sir Erskine Perry.	Mr. Fitzgerald.
Viscount Monck.	Sir James Graham.
Mr. De Vere.	Mr. H. Herbert.

MR. ATTORNEY-GENERAL FOR IRELAND, IN THE CHAIR.

Acheson Lyle, Esq., called in; and further Examined.

4082. *Chairman.*] AT the conclusion of your examination upon the 8th instant, you were asked by the Committee to provide yourself, against this examination, with certain information; are you enabled now to give that information to the Committee?—To a certain extent, I am; but I am not able to furnish all the information that I then thought I could get.

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4083. Will you state what you can give to the Committee?—As I understood the Committee, they desired to have a Return showing the number of receivers in each of the different offices of the Masters in Ireland, distinguishing the demands in respect of which they were appointed, and showing also those that were in minor and lunatic matters; they further desired, I believe, to have the amount of the rental of lands in each case, and the amount of the demand of the petitioner, and to know whether it arose upon a judgment or mortgage, or whatever the charge was, in respect of which the receiver was appointed. In my own office I was able, by going through the papers, with some difficulty to ascertain the nature of the demand, in respect of which the receiver was appointed, and that I am prepared to give. I was not able from the documents in my office to ascertain the amount of the rental of the lands in each particular case over which a receiver was appointed, or the amount of the petitioner's demand in each case. The receiver's accounts are not filed, nor do they remain in the office of the Masters; immediately on their being passed they are sent over and are filed in the registrar's office. I could have ascertained the amount of the petitioners' demand in the cases in which I myself appointed receivers under the 15th section of the Chancery Regulation Act, because a copy of my own order appointing the receiver, and of the order for the payment of the demand in respect of which the receiver is

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appointed, remains there; but those form a small portion of the number of the cases in which receivers have been appointed.

4084. Will you give to the Committee the materials which you can lay before them from your own office?—The total number of receivers that appear upon my receiver's book at present is 939; of these, 211 are receivers that were appointed originally in the Court of Exchequer when I was Chief Remembrancer of the Exchequer; and when I was transferred as a Master into the Court of Chancery, I made out a new book, and I took out of my Exchequer book all the receivers who had passed an account during the previous year. It was in 1850 that I was transferred. I commenced in January 1849, and I took from the Exchequer receiver's book the number of receivers who happened to have passed an account in my office in that year, or who, from any other reasons, I knew to be a receiver acting over the lands; and the number of those transferred into my new book was 268.

4085. Mr. *Henley*.] That is the number now remaining?—Some of them may since have been discharged.

4086. This is not the amount at the present moment?—No; I will come to that afterwards. I appointed myself, since 1850, 742 Chancery receivers. Of those, 78 appear since to have been discharged, and their recognizances vacated, so that the number now remaining of the receivers appointed by me in Chancery since the 14th of August 1850 is 664; 78 I know to be discharged, because the recognizances have been vacated on the roll, but I am not able to say whether there may not be some more discharged, because, as I stated before, the solicitors do not always, when receivers are discharged, bring in the order into my office, and I have no means of entering upon my book the fact that they are so.

4087. Mr. *Whiteside*.] It is only in 78 instances that the recognizances have been vacated?—Yes, only 78; that left 664 apparently still existing receivers, of those appointed since 1850. Of the 268 appointed previous to 1850, I am not able exactly to state what number are discharged; but, so far as I was able to collect from the records of my office, and the information I got, I think 57 of them have been; so that that would leave the number of receivers actually in operation in my office, 875. As I have said before, we have not the means of becoming perfectly accurate, from the causes which I have explained to the Committee. I have said that I am enabled to give the Committee the nature of the demand under which those receivers that have been appointed by me since 1850 were appointed, under what Acts of Parliament. Of the 742 receivers that I have appointed since 1850, 26 were appointed under the old Mortgage Act, the 11th & 12th of George the 3d, chapter 10, for the payment of interest.

4088. Mr. *Ellice*.] Those are to receive the interest upon mortgages?—They are to receive the rents of lands, and out of those rents to pay the interest due upon the mortgages.

4089. There being no dispute in any of those cases with respect to the priority of the demand upon the land?—None at all; it was a remedy given by the Irish Parliament to persons having mortgages to get a receiver over the lands for the payment of interest upon their mortgage whenever there was a year and a half's interest due.

4090. And that whether the parties were of age, or under age, or whether they were capable of managing their own affairs, or were under any incapacity?—Perfectly.

4091. It was merely a remedy for a simple mortgage creditor?—Nothing more.

4092. And that remedy would be given whether the estate was a settled or an entailed estate or not?—Certainly, it would be given as against the mortgagor in possession.

4093. Whether he was possessed in fee of the estate, or had only a life interest in the estate by reason of settlement or entail?—Quite irrespective of that; I should, perhaps, mention that in those cases the order, which is always made either in the Court of Chancery or at the Rolls, is to appoint a receiver either over the whole of the lands, or a competent part.

4094. At present that mortgage creditor could go immediately to the Incumbered Estates Court, and enforce the principal of his demand?—He could if his demand was one affecting the inheritance, but not if it was only a debt due by the tenant for life of the estate.

4095. Was

4095. Was not a remedy given against the party possessing the inheritance?—No doubt.

4096. In that case the creditor would have the direct remedy of recovering his principal in the Incumbered Estates Court?—Certainly; I have mentioned the number of receivers appointed under the Mortgage Act. The number appointed since the same period under the Act of the 3 & 4 Will. 4, c. 55, commonly called Sir Michael O'Loughlin's Act, amended by the 3 & 4 Vict. c. 105, is 109; the number appointed under the Act 1 & 2 Vict. c. 109, being the Act substituting rentcharges for tithes, is 46. One receiver has been appointed under the Act 3 & 4 Vict. c. 105, over dividends; the 21st section of that Act having declared a judgment in charge upon such property and given a power to appoint a receiver over the annual proceeds thereof. And under the Public Works Act, the 5 & 6 Vict. c. 89, which gave an easy remedy to the Commissioners of Public Works for the recovery of money lent by Government for drainage purposes, I have appointed four receivers.

4097. Has not the Crown in those cases the right of issuing an extent against the estate if it chooses to do so?—I am not quite prepared to say that an extent could issue for a Crown debt at the instance of the Commissioners of Public Works.

4098. Under an extent an estate could be brought to sale if it was an estate of inheritance?—I think it could. I come now to the 13 & 14 Vict. c. 89. Under orders made by the court in general cause petitions, under that Act I have appointed 186 receivers, and under orders, my own orders, or orders made by other Masters under the 15th section of that Act, by which we have jurisdiction to appoint receivers the same as the court, I have appointed 314 receivers; 55 receivers have been appointed in minor matters, and one receiver in a lunatic matter. These make up 742, being the number of receivers appointed by me since August 1850 to the present time.

4099. You cannot tell the Committee for what amounts, in those cases, a receiver is granted?—I cannot at present, for the reasons which I have endeavoured to explain to the Committee recently. The orders are remaining in the registrar's office, but at the instance of the Committee, expressed the day before yesterday, I have prepared returns which will at once, if moved for in Parliament, elicit from the registrar's office, the whole of that information. I have explained the reason why I could not get it in my own office; I addressed a letter to each of the other Masters, requesting that they would give me the information, if possible, and stating that the Committee desired it, and I have received an answer from every one of the Masters, which is, in substance, what I have stated for myself.

4100. Mr. *Henley*.] With regard to the number of 314, which you stated were appointed under the 15th section of Sir John Romilly's Act, would any parties be brought in under the authority of that section, under the Judgment Mortgage Act?—Yes; they would all be included in that, because when the judgment is registered as a mortgage, it becomes an incumbrance upon the land, and the petitioner proceeding to raise that demand would file an ordinary cause petition under the 15th section; and all of those are comprised in the 314. With respect to the amount of the rental of the lands over which receivers are appointed, with a view of showing how small they in some cases are, I had the accounts of the receivers in 12 cases examined in the registrar's office. And it appears that, in the case of Thacker and Delaney, the yearly rent of the land is 60 *l.* and the head rent 27 *l.* 13 *s.* 10 *d.*, so that the receiver in that case is over a rental of 32 *l.* 6 *s.* 2 *d.* In the case of Goring and Lalor, which is a cause petition, and the receiver in which was afterwards extended to four other petition matters, the rental is 72 *l.* 16 *s.* 6 *d.*, and the head rent is 27 *l.* 5 *s.* 9 *d.*; so that the only sum which can go in liquidation of the petitioner's demands is 45 *l.* 10 *s.* 9 *d.* In the case of Macklin and Clarke, the rental is 39 *l.* a year, and the head rent is 21 *l.*, so that the receiver is over a rental of 18 *l.* a year. In Woodley, petitioner, and Clarke, respondent, the receiver is over a rental of 8 *l.* 10 *s.*

4101. Is there any head rent?—No; the rental of the lands over which he is placed is 8 *l.* 10 *s.*

4102. Is there any head rent payable out of that?—I think not. In the case of Weller, plaintiff, and Jones, defendant, in which the receiver has been extended to three other petition matters, the receiver is over a rental of 55 *l.*, the head rent is 4 *l.* 12 *s.* 3½ *d.*, so that the whole of the available rent is 50 *l.* 7 *s.* 8½ *d.* In the case of Nally, petitioner, and Cosultoe, respondent, the rental is 41 *l.*, and the head rent is 8 *l.* 10 *s.*, so that the receiver is over a net rental of 32 *l.* 10 *s.*

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In the case of M'Manus, petitioner, and M'Donough, respondent, the rental is 43 *l.* 15 *s.*, and the head rent 28 *l.* 4 *s.* 7 *d.*, so that in that case the receiver is over a net rental of 15 *l.* 10 *s.* 3 *d.* In the case of Goodwin, petitioner, and Brook, respondent, the rental is 26 *l.* 10 *s.*, and the head rent is 8 *l.* 6 *s.* 1 *d.*, therefore the net rental over which the receiver is appointed is 18 *l.* 3 *s.* 11 *d.* In the case of Dillon, petitioner, and Morgan, respondent, the rental is 43 *l.* 19 *s.*, and the head rent is 26 *l.* 11 *s.* 1 *d.*, so that the net rental is 17 *l.* 7 *s.* 11 *d.* In the case of Hogan, petitioner, and Hanlon, respondent, in which there is a petition matter and two causes, the rental is 38 *l.* 10 *s.*, and the head rent 20 *l.* 6 *s.* 2 *d.*, so that the net rental for the creditor to pay him and the petitioner in the matter, and all the parties in the two causes, is 18 *l.* 3 *s.* 10 *d.* a year. But there is, perhaps, a more remarkable case in my office, the case of Coffey and Quentin, in which a receiver has been appointed, under the order of Master Litton, over 26 *l.* a year; the property is a house, and the receiver appointed at the suit of an equitable mortgagee, to whom there is an amount due for principal, 225 *l.* and 87 *l.* 13 *s.* 1 *d.* for interest. There is a prior incumbrance upon the house by a prior mortgage, on which there is 274 *l.* due for principal and interest at the present time, and for those two demands there is a receiver over a house of 26 *l.* a year. There is a case also, and a very remarkable one, that has happened in my own office since I was here; an account was brought in to be passed, and I thought it was so remarkable an instance, that I brought the account with me; it is the case of Littlewood and Brierley. The rental in that case appears to be 15 *l.* a year; the account is an account for 10 years, and the sum that has been received has been 153 *l.* The account was brought before me to be passed, and finding that it had been an account for 10 years, I of course disallowed both the fees and the poundage, and I sent for the solicitor and saw the previous account, which had been passed in the Exchequer by the Second Remembrancer when I was Chief Remembrancer of the court. I got an attested copy of that account, which is for the rent of the same premises, except that the premises were then worth 12 *l.* a year. This account appeared also to be an account from the 25th of March 1836 to the 25th of March 1845, that is nine or 10 years, so that in that case the Master of course also disallowed all the fees and costs, the account not being in time. Upon that account the sum received was 104 *l.* 10 *s.* Opposite to that there are the disbursements; principally small sums for proceedings taken against the tenant; for it appears that immediately upon the receiver being appointed, he was obliged to bring an ejectment to get out a tenant. The account specifies all the disbursements from 2 *s.* 6 *d.* upwards; there appears to have been 20 *l.* 18 *s.* 6 *d.* laid out in the repairs of the dwelling-house, and very likely the amount of that expenditure was the cause of the increased rental from 12 *l.* to 15 *l.* The account passed, but no costs were allowed, so that the attorney lost his costs, and the receiver lost his poundage, which was 5 *l.* 4 *s.*, and yet there was but 30 *l.* 8 *s.* in the receiver's hands, which he was directed to pay over to the petitioner; 30 *l.* 8 *s.* was all that remained after deducting the expenses.

4103. Mr. *Ellice.*] For how many years?—Nine years.

4104. Mr. *Henley.*] What would have been the costs and the poundage, supposing they had been allowed?—The costs and the poundage would have been 10 *l.* 1 *s.* 9 *d.*

4105. That would have sweated the 30 *l.* 8 *s.* down to 20 *l.* something?—Yes.

4106. Mr. *Ellice.*] That 20 *l.* something would have been the result of the 10 years' account, while the property was in the hands of the lessee?—Certainly.

4107. How many years, as far as you can judge from the papers before you, has this unfortunate house in Roscrea been in the hands of a receiver in the Court of Chancery?—The receiver was appointed immediately after the passing of Sir Michael O'Loughlin's Act.

4108. Will you state the date?—This account is from the 25th of March 1836 to the 25th of March 1845.

4109. *Chairman.*] When you speak of Sir Michael O'Loughlin's Act, you mean that it was a receiver appointed upon a judgment?—Yes. Then the next account was from the 17th of July 1845 down to the 1st of May instant.

4110. Mr. *Ellice.*] So that the house has been in the hands of the receiver for at least 20 years?—Certainly.

4111. *Chairman.*] You stated that you disallowed the costs and the poundage upon

upon that first account, was that because the receiver had not accounted according to the rules of the court?—Yes, certainly.

4112. And if he had accounted according to the rules of the court, I think the whole balance would have been absorbed in the costs of accounting?—Certainly.

4113. Mr. *Henley.*] Would there have been any other costs incurred, supposing this account had been brought in year by year, as it ought to have been?—If an account had been passed every year, the same amount probably of 4*l.* 15*s.* would have been every year incurred, and there would have been poundage every year. The 4*l.* 17*s.* 9*d.* would have occurred every year, and the poundage, as the amount of the rent was only 12*l.*, would have been only 12*s.*; but 4*l.* 17*s.* 9*d.* have been added to the expenses every year.

4114. *Chairman.*] And the costs would have absorbed the whole?—Yes.

4115. Mr. *Henley.*] It was a notorious thing for the attorney that the parties did get 30*l.*, whereas if the attorney had passed his account year by year, they could have had nothing?—Yes; I felt it my duty to send for the solicitor, and inquire into the circumstances.

4116. Is it a stringent rule of the court, that where a professional man acts in that way, so that the wretched client would get something, you punish him by docking his costs and poundage at the end of the 10 years, which would have left 20*l.* for the parties entitled to it, and force him to account in that way by which the man could by no possibility get anything?—At that time the rule was stringent. We had then no power to allow the fees and costs; that rule has been relaxed since, and by a subsequent rule we have power to inquire into the circumtances, and if we find that there was no default in the receiver, that it was done for a good purpose, we have the power to allow the fees.

4117. *Chairman.*] And you have power to make the rule that he shall account once in three years?—Yes. In this case if the receiver had come to me, or to one of the other Masters, we should have made an order that he should only pass his next account every three or four years. I have done that in many instances, and that is one of the reasons why the number of accounts passed in the year does not always tally with the number of receivers in the office, because there are numbers of cases in which I have made rules that the receiver shall not account again for four or five years.

4118. Mr. *De Vere.*] For whose benefit was it, in this case, that a receiver should have been appointed?—The result of the account shows that it was for nobody's benefit. I sent for the solicitor in the case, and I got him to show me a statement of the account as between the petitioner and the respondent. It appeared that the receiver was originally appointed for a 100*l.* judgment. I saw an account showing everything that had been paid the petitioner; he paid it regularly as he got it every year to the creditor; but giving credit for all those sums, and charging merely the costs of the management of the property, and not including the costs of the petition matter in which the receiver was appointed, instead of the debt being diminished it has increased; it is now more than 100*l.*

4119. Sir *E. Perry.*] Has not the Court of Chancery the power of ordering a sale in all those matters?—Not in this case, because it was a petition presented upon a judgment under the Sheriffs' Act, which only gives the power to appoint a receiver.

4120. In most of the cases that you have been referring to of small rentals, the court has the power of ordering a sale?—In a great many it has, but some, no doubt, are cases of receivers under the Sheriffs' Act, or for rentcharge in lieu of tithe, in which case it has not.

4121. How has the practice arisen in Ireland of not ordering a sale in these small matters, and of appointing receivers, excluding those cases where they have no power, but in other cases, where there is a power over the land, and a power in the court to order a sale?—In some cases the petitioner or the plaintiff in the cause does not look for it; there may be an arrangement between him and the respondent that he will be content to take his interest secured by the receiver, and will let the principal be; that very often occurs. The petitioner in the case I have mentioned might perhaps have filed a petition and prayed a sale if he had chosen; but he chose rather to have the summary remedy of a receiver, and he got it.

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4122. *Chairman.*] In 1836 he could not have done so?—Not if it were a judgment against the respondent himself.

4123. Mr. *De Vere.*] When the creditor found that he was deriving no benefit from this receiver, did he make any statement to that effect to you?—None; the solicitor says that he frequently applied to the respondent, and told him he was willing to discharge the receiver, but he would not do it; he was a man so utterly reckless of his own interest that he did not care about it, and he would not pay the cost of discharging the receiver.

4124. Mr. *Henley.*] Will you give the Committee the particulars of the 153*l.*?—The 153*l.*, with the balance of 30*l.* 8*s.*, on the former account, is the amount of the charge against the receiver. They come to 183*l.* 8*s.* The only credits that are taken as against that are 11*l.* 13*s.* 5*d.* poor rate, and 1*l.* 18*s.* 6*d.* income tax; and a sum of 4*l.* 5*s.*, allowed to the under tenant of the dwelling-house for repairs; those, with 5*d.* postage, are the only credits; and thus the sum ascertained to be in the receiver's hands was 157*l.* 13*s.* 1*d.* I should say that it was only nominally in his hands, because I ascertained that it had been paid over constantly from time to time to the petitioner in the matter, and it was credited in the account upon foot of the demand which I saw in the solicitor's hands, and which showed the debt increased, though the solicitor assured me not 1*s.* of the costs of appointing the receiver had ever been paid.

4125. *Chairman.*] The rent had not been sufficient to keep down the interest upon it?—No; and to pay the ordinary outgoings of the property.

4126. Mr. *Henley.*] In the second 10 years the costs not having been allowed, the estate yielded to the parties to whom it was due in the receiver's hands, 157*l.* upon a rental of 15*l.* a year?—Rather less than that, because he has taken credit for his fees, which of course, now having the power, I will allow him. They are included in the 157*l.* 13*s.* 1*d.* I may add, that even yet the Masters have not the power to allow a receiver the costs of passing the account; the rule was relaxed so far as to give the Masters the power to allow a receiver whom they thought a meritorious receiver his poundage; but it did not enable them to give him his costs, so that he must still go to the Master of the Rolls for an order for his costs.

4127. In the former statement you gave the Committee 10 cases, and they amount to about 25*l.* 10*s.* a case. Can you inform the Committee what would be the average cost upon each of those cases annually?—I made a special and separate inquiry in respect to costs, with the view of endeavouring to show what the costs formerly were, and what the costs now are, of the management of an estate under a receiver; and I have got some of the details here, which I can put the Committee in possession of. Of course they are very much varied by the circumstances of each property, and if you come to compare, you will find that on a small rental the per-centage of costs upon the rents received is much greater than it is in the case of a large rental.

4128. I am speaking of cases of 25*l.* a year. You named 10 cases, the highest being a 50*l.* rental, and the lowest being an 8*l.* 10*s.* rental, the average was a little over 25*l.*; what would be the cost in the case of a rental of 25*l.* a year?—As I stated in my former examination, I have got some exceedingly intelligent men as receivers, in the nature of district receivers, and I directed one of the most intelligent of them to make out a return showing the average expenses incurred for costs upon the management of properties under the Court of Chancery. He has made out a statement on 11 cases, in which he shows the yearly rental of each estate, the number of years that it has been under the management of the court, the gross receipts, the amount of the costs, and the per-centage upon the amount of the sums received, and you will find that they vary as much as from, in one case 29 per cent., down to five per cent.; but I should add, that that one case was an extraordinary case. It was a case of house property, where there was a monstrous deal of expenditure, and difficulty in letting the property, which was found in the very worst possible condition when the receiver was appointed. A number of directions were obliged to be given for the letting of the property, which was all out of lease, and in that case the costs amounted to 29 per cent.; but taking the above properties, the average expense for law costs on estates with a rental of between 350*l.* and 2,000*l.* a year, is under five per cent.

4129. How is the fee charged upon passing an account in the Master's office; is it a fee upon the account, or upon the amount of the account?—The costs depend entirely upon the length of the account. A great number of the charges

are

are the same, whether the account be large or small; but the cost of drawing the account depends entirely upon the length; it is so much a folio.

4130. Is there any other fee in the Master's office, except the charge by the folio?—Yes; here is a bill of costs of passing a receiver's account.

4131. *Chairman.*] Is that according to the present system?—Yes; it was passed in my office the other day.

1432. Mr. *Henley.*] Will you read the items?—The receiver's solicitor attending and taking instructions from his client, to prepare his account, 12 *s.* 4 *d.*

4133. Is that whether it is large or small?—No; the fee would be 6 *s.* 8 *d.* if it was a small account.

4134. What is the next item?—Draft rental account, affidavit, and certificate. The account in that case being 38 folios, it is charged at 6 *d.* a folio, which is the regular cost; it comes to 19 *s.*

4135. That would vary?—Yes; it may be considerably more.

4136. Would that be a large or small account which you have read?—Thirty-eight folios is a medium account.

4137. There would be few accounts less than 4 *s.* or 5 *s.*?—I think there would be none.

4138. Will you now go to the next item?—The next item is the copy, which, of course, varies with the length; in this case it is 9 *s.* 6 *d.*; that is 3 *d.* a folio. there is a fee to the solicitor for attending to lodge the account in the office; that is 6 *s.* 2 *d.*

4139. Is that the same in every case?—That is the same in every case. Then there is another copy of the account which he is obliged to make for attesting; that is another 9 *s.* 6 *d.*, at 3 *d.* per folio; there are the draft and two copies made, one the attorney keeps, and the other is laid before me, and ultimately goes to the registrar's office and is filed, and remains there as of record. The next item is the Chancery Fund on the summons to pass the account.

4140. Is that a fee?—It is levied by stamps, and goes to credit of revenue.

4141. Is that a per-centage?—No; a fixed sum.

4142. How much is that?—Thirteen shillings. Of that summons he is obliged to make a copy for every person who is entitled to attend upon the passing of the account, and the cost depends upon the number of persons who are entitled to attend.

4143. What is the lowest amount of that?—One shilling each copy; in this case there were five copies; and therefore the amount is 5 *s.* The solicitor is obliged to endorse upon the summons the name of the solicitor for each person who is to be served with it, and for endorsing it, and for attending upon the clerk of appearances in the Court of Chancery, who has the service of all summonses, his charge is 3 *s.* 1 *d.*; that is fixed upon every account, no matter what the length of it is. The next charge is, transmission; that is the sum that is paid in the office of the clerk of appearances, 4 *s.*, for the remuneration of the person who goes to serve it; there being four copies, it was 4 *s.*; if there were three copies it would be 3 *s.* There is then the Chancery Fund on affidavit and certificate; that is a fee levied by a stamp, and is fixed the same in all cases, 7 *s.* 4 *d.* The solicitor has a fee for signing the account, which he is obliged to do, it will not be received without the solicitor's signature to it, he signs the account and the affidavit, his fee for that is 3 *s.* 1 *d.*; that is the same in every case. The solicitor then has his own fee for attending when the account comes before the Master to be passed, and that is 6 *s.* 2 *d.*, which is the ordinary solicitor's fee. The solicitor then charges for a letter to the receiver, with account and affidavit; he is obliged to send down the account and the affidavit to the receiver to be sworn, and to be transmitted back to him in town, and with it he writes a letter, giving him any instructions that he may think necessary, and for that he has a fee of 3 *s.* 1 *d.* The next item is a fee of 2 *s.* 6 *d.*, which is paid to the person who takes the affidavit, that is the Commissioner in the country, and is fixed in all cases. There is then a small charge for postages of 1 *s.* There is a copy of the account allowed to attest at 1½ *d.* per sheet, late currency, which is 4 *s.* 9 *d.* in this case.

4144. In a small case it would not be so much, perhaps?—It appears that 4½ *d.* has been deducted by the officer on taxation in this case. Then there is 1 *l.* 7 *s.* 3 *d.*, which is the fee for attesting in the register's office; when the account is filed, the receiver is obliged to keep an attested copy; the register's fees on this account amount to 1 *l.* 7 *s.* 3 *d.*

4145. What would they be upon a 25 *l.* account?—It would depend upon the

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length entirely; it would vary with it, and you may take it with the same reduction as you did upon the draft and the copies previously; it is so much a folio.

4146. We may take about one-fourth of it?—I should think about that. Then he is entitled to a fee for going to the register's office to get the account attested, that is 6*s.* 2*d.* also; that is the same in every case. Then he is obliged to have his bill of costs taxed, before it will be allowed in the account; I cannot allow it till he brings it to me taxed, and he is obliged to go to the Taxing Master's office, and for that he pays 10*s.* 6*d.* Chancery Fund upon the costs; that is the same upon every account, the minimum and the maximum.

4147. What would be the poundage upon a 25*l.* account?—Twenty-five shillings; it is 1*s.* in the pound.

4148. Is there anything else that would be docked?—He has a fee of 6*s.* 2*d.* upon attending the taxation of this account. Altogether that came to 7*l.* 16*s.* 9½*d.* I think some of the items are probably larger and might be reduced. In the account which I have just had before me, I find that the costs of passing the account were charged at 4*l.* 17*s.* 9*d.*

4149. That, I suppose, is independent of the costs of any other solicitors who may act upon the part of any one interested in passing the account?—Altogether. And with respect to them, I should say that the practice in Ireland differs from the practice in England. The practice in Ireland is, the plaintiff or the petitioner is always entitled to attend at the passing of the receiver's account and also the principal defendant. In England, the receiver immediately pays the costs of both those parties out of the rents. In Ireland that is not the case; the receiver does not pay either of those costs, but the petitioner or the plaintiff gets them as his general costs in the cause; when he comes to tax his full costs, he charges them in his general costs in the cause, and so does the defendant; and if the defendant gets his costs he gets them; if not, the solicitor must go to his own client, and make him pay the costs for attending.

4150. Where the receiver has been extended in that case, the same rule applies to the parties interested in the extension?—In each case. The solicitor for the plaintiff in each case is entitled to attend upon the passing of the account, and has his costs of course, but they are small.

4151. Mr. *De Vere.*] What is the poundage allowed to the receiver upon collecting an account?—One shilling in the pound; it is 5 per cent.

4152. What is the ordinary poundage allowed to agents in Ireland for receiving rents upon an estate not under a receiver?—That is the general remuneration, 5 per cent.

4153. In the case of agents not being receivers, who are paid 1*s.* in the pound for collecting rents, do they make a separate charge for furnishing the accounts and making out copies of rentals?—I think in most cases with which I have had acquaintance, and in my own case, a small sum is charged in the nature of postages and receipt stamps, but it is a very small sum, and covers all.

4154. I find the sum of 19*s.* mentioned in this bill of costs, forming a very large proportion as compared with the money received by the receiver as rents collected?—No doubt.

4155. Is there anything whatever analogous to that in the payments made to agents for private estates?—Nothing in the world; if the receiver was an agent, he would furnish his account at his own expense, but he cannot do that in Chancery, because he must have a solicitor; the account would not be received without a solicitor.

4156. Mr. *Whiteside.*] Does that account furnish the Committee with an accurate statement of the expenses under the receiver system, or is it not merely one item of the expenditure?—One class of items of the expenditure.

4157. Every party having an interest in the cause is summoned, or every party upon whom the summonses are served, may appear?—No, I think it is not so extensive as that; if I found that there were a number of parties attending, I should say, Your attendance is not necessary here; I will not take down your attendance, and you will get nothing.

4158. But in many cases several parties do attend?—No doubt.

4159. The costs of each of those parties who attend are likewise to be included in the costs affecting the estate, as well as the costs of the receiver in passing the account?—Certainly; they appear in the general bill of costs in the cause, but

if

if the defendant be the inheritor, he does not get his costs, and therefore he is obliged to pay his own solicitor.

4160. In the case of an account, instead of being 5 per cent., taking the rental of 25 *l.* a year, the costs of passing the account might in that case nearly amount to 5*l.*?—Yes, that would be about it, in all probability.

4161. Then it is a most natural event that some law costs should be incurred; it very often happens?—There are very often costs incurred by the receiver altogether independent of the costs of passing his account; if he has to take proceedings to enforce the rents, or to let the lands, that would be the result.

4162. It would be a very moderate computation to say that it would take off another five per cent.?—Not so much; it varies with the circumstances of the cases.

4163. *Chairman.*] Where the rental is small, such as 25 *l.* a year, what would be your direction as to the period of accounting in ordinary cases?—Uniformly that the next account should be passed after three or four years, according as I think it right, provided it be a case in which the receiver has power to apply the surplus rents from year to year in liquidation of the demand, and cannot keep them in his pocket, or where I have authority to give him that power. I never direct an account to be postponed for three or four years if it necessarily follows from that that the receiver will retain the money in his pocket, that he may keep it with impunity during that time. It is always accompanied with an order that he shall from time to time, half-yearly, as he receives the rent, pay it over to the petitioner. If I have not authority to give that power, I direct them to go to the Rolls and get that power.

4164. Mr. *De Vere.*] One of the consequences of the enormous expense of receivers' accounts is, that you find it necessary not to require that they shall pass annual accounts?—Yes; it is a power which I have, and which I exercise freely for the purpose of saving expense. In this return, which, as I have said, is a statement of all the actual expenses incurred by a most intelligent receiver in 11 cases over which he has been appointed in my office, and is now acting in most of them, he gives a statement of the expenses of management, which I will hand in; and, as I have said, the per-centage upon the rents received, which was expended in law costs, varies from 5 per cent. up to 29 per cent.

4165. *Chairman.*] You mentioned some special circumstances as to the 29 per cent.?—Yes; the case of Stafford and Morris was a case under most peculiar circumstances; it was a case in which the estate was brought into the office in the very worst condition possible; it is a Dublin property, consisting of dilapidated houses, and there was the greatest possible difficulty in getting out the tenants who were in, and procuring others; and a great deal of expense was incurred in that way that would not occur in 99 cases out of 100. The statement I hand in shows that of the properties mentioned in it the average per-centage of expense for law costs on estates with a rental of between 350 *l.* and 2,000 *l.* a year, is under five per cent.; where it is under 350 *l.* a year the per-centage upon the rents received is 11¼ per cent.

4166. Mr. *Whiteside.*] Is that the cost separately from the poundage?—It has nothing to do with the poundage whatever, nor is it exclusive of the passing of the account; that is included of course. And I should also observe, that in that sum is included a variety of costs which would be incurred almost in any case by a landlord whose estate was not in Chancery at all. It includes all the costs of civil bill ejectments and other proceedings against the tenants by distress or otherwise, which of course might be incurred whether the estate was in the Court of Chancery or not. I have here also a statement of another very remarkable case, very generally known, by name at least, the case of Gardiner and Blessington. It contains all the costs that were incurred by the receiver in that case, from his appointment on the 3d of November 1837 down to the present time; the costs incurred in management, the number of tenants, the yearly rental, the costs of passing the account, and the miscellaneous costs incident to the management of the estate, and the law costs incurred in the management by ejectments and proceedings against the tenants separately.

4167. Mr. *Whiteside.*] That property was peculiarly well circumstanced, was not it?—A great deal of it was; and I should say that the receiver is a most intelligent man, although a man who would be excluded by the present orders from being a receiver at all, for he is a practising barrister.

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4168. Have you any document by which you could show the Committee the average cost in cases under 200 *l.* a year?—No.

4169. According to your knowledge of the subject, would the costs increase in exact proportion as you descend?—No doubt they do, in a very irregular proportion, but they do increase; some of the costs are fixed costs, whether for large or small estates, and when you come to set them off as a per-centage against the proceeds of a very small rental, it is a larger per-centage upon the amount than in the case of a larger rental.

4170. Would 15 per cent. be an unreasonable deduction to make for the costs, exclusive of the poundage, in cases where the rental is under 200*l.* a year?—I think if you applied that to a case where the rental is 100 *l.* a year, you would probably be pretty correct, but I am now speculating merely from a general view, and I would much rather speak from detailed returns, which will be more accurate.

4171. The result is, that the costs of course increase, and are a burden upon the estate in exact proportion as the rental diminishes?—In the return which I have here, there is a great variety of rental, and I dare say I could tell you pretty well from that; for instance, here is a yearly rental of 170 *l.* a year; the per-centage upon the sums received upon that was 10½; there is another estate of 150*l.* a year, and the per-centage there was 10½ too. Here is an estate of 120*l.* a year, but the receiver in that case was also appointed over another estate, where the rental was above 1,000 *l.* a year, and in that case the per-centage was only 5½, but that was struck upon the two; but it is very plain from this return, that the larger the estate is the per-centage will be the less upon the amount of the sums received.

4172. Is not it desirable, according to your experience, to facilitate a sale wherever you can, and dispense with the necessity of appointing a receiver?—Most certainly, in cases where it can be done.

4173. In reference to this Judgment Mortgage Act, are there any remedies, so far as regards possession, that can be enforced, except to give possession either to the court, or to the creditor, or to order a sale?—I know of no other.

4174. Since the passing of that Judgment Mortgage Act, is not it the fact that no receiver can be appointed in any case in which a sale is not prayed?—A sale is either prayed, or it is stated that there are already proceedings going on in the Encumbered Estates Court towards a sale.

4175. Therefore all the cases which you have appointed yourself under that Judgment Mortgage Act, to the number of 314, have been appointed by you in cases in which a sale might be had, and in every one of them a sale was prayed?—No doubt, or else, as I have said, a sale was stated to have been prayed and looked for in the Incumbered Estates Court.

4176. Is not it the course of practice of the court in Ireland, that where a party has an equitable charge, or it may be a legal charge, and his demand is uncontested, he lodges a petition for sale, to give him a receiver pending the proceedings that are to eventuate in a sale?—Not of course, I think; I think that he must show a certain quantity of interest due to him in analogy to the Mortgage Act. There was a case not long ago, that of Herbert v. Greene, in which the Master of the Rolls discussed that question very fully, and referred to the officers of the court, and said that it had been the constant practice not to appoint a receiver, unless there were either a certain quantity of interest due, I believe he said a year, some said a year and a half, in analogy to the Mortgage Act, or that the property was a scanty security for the demand. Therefore if you come to get a receiver appointed, you must show some of those facts, or the court will not give you a receiver.

4177. Then, according to that exposition of it, the mortgagee having a judgment files his petition, and a year's interest runs up before he has a sale; is not that a matter of course?—Yes.

4178. Although he is entitled to a sale, and is proceeding to a sale as rapidly as the process of the court admits?—Yes; no doubt he will get a receiver in that case.

4179. By the Judgment Act of the 12 & 13 Vict., it is enacted, "That from and after the passing of this Act, the provisions hereinbefore recited of the said Acts of the sixth year of King William the Fourth and the fourth year of Her Majesty, shall not in anywise extend or be applicable to any judgment entered up after the passing of this Act in respect of any sum then actually due for principal and

and interest (exclusively of costs, and over and above all just and fair allowances) not exceeding the sum of 150 *l.*" Was there anything, according to your experience of the subject, unreasonable or inexpedient in fixing that limit by Act of Parliament against the appointment of receivers?—I think I stated, when I was examined before, that it appeared to me that the consideration should not be exclusively the amount of the petitioner's demand, but that it should have reference also to the rental of the estate.

4180. I am taking it by steps. Was not it a wise and expedient Act of Parliament to prohibit the appointment of receivers for small sums, such as 150 *l.*?—I would not say that it was. I think if a party is entitled to demand the 150 *l.*, and sees his creditor in possession of a very large estate, giving a large rental, I do not see why he should be precluded from enforcing his rights as against the rents of that estate though his demand was small.

4181. Would you prefer making the limit with reference to the rental?—Decidedly; and I think it should be wherever the court sees that the rental is so small that it will be exhausted entirely in costs, and that the petitioner can never get the benefit of one shilling of it.

4182. Mr. *Ellice.*] Would that be the limit to which you would confine the refusal of a receiver upon the application of any creditor?—I think that that ought to be the principle upon which it would be done.

4183. So that if it was clear to the court that a creditor might obtain 5 *l.* from the rental of an estate, you would give him a receiver, and it would appear to be equally just, on the same ground, that you would give a receiver to a creditor who looked for 1,000 *l.*—I think so.

4184. Mr. *Whiteside.*] Have you read the Report of the Committee of the House of Commons which sat upon the subject of receivers?—I have.

4185. That is the Report of 1849?—Yes.

4186. I believe upon that occasion they examined Mr. Hamilton, the Second Remembrancer of the Court of Exchequer?—They did.

4187. Have you read his evidence?—I think I did, but I am not very sure.

4188. Do you recollect his statement to the Committee, that in the majority of instances the judgments upon which he had appointed receivers were cases under 100 *l.*?—I am sure it was so, because that was my own case when in the Exchequer.

4189. And he stated also that the costs of the average expense of managing an estate under that receiver were 15 per cent.?—I believe he said so; but I am perfectly persuaded that they are not so much now.

4190. With regard to the Judgment Mortgage Act, that Act converted a judgment creditor into a mortgagee as soon as he registered his judgment against specified lands?—It did, with all the powers of a mortgagee.

4191. And therefore the court held that, irrespective of the limit of 150 *l.*, which applied only to a judgment, as soon as the thing was changed by name into a mortgage, that limit no longer applied?—Certainly.

4192. That is without any express law; under the former Act of Parliament it had that effect?—Certainly.

4193. Sir *J. Graham.*] That is the law now?—That is the law now.

4194. Therefore, virtually, there is no limit now?—There is no limit now, if a judgment creditor will register his judgment.

4195. Mr. *Whiteside.*] If he chose to proceed under the old Irish Mortgage Act, and the mortgage was 150 *l.*, and there was a year and a half's interest due, he would have a right to make the Court of Chancery as an agent, not for a sale, but to receive that interest?—He would.

4196. And having got that 7 *l.* 10 *s.*, he would be at liberty to repeat the process over again?—He would.

4197. So that a skilful solicitor out of a little affair of that nature might have very pretty pickings?—No doubt.

4198. Sir *J. Graham.*] Each receiver for the 7 *l.* 10 *s.* must find landed security and two sureties?—Yes, he must.

4199. Mr. *Ellice.*] Does not that system tend to the encouragement of small advances through professional men for the purpose of obtaining a profit by the receivership?—I have no doubt in the world that the profession of solicitors in Ireland are exceedingly anxious to get authority from creditors upon estates to file petitions and appoint receivers.

4200. Mr. *Whiteside.*] You spoke this moment to the right honourable gentleman

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man who put the last question about an estate of small value; is not that the very case where a sale is granted, where it ought not to be necessary to appoint a receiver, the creditor being sure of recovering his debt by the sale which he prays; what is the necessity where he has prayed a sale of an estate of 1,000 *l.* a year; who benefits by the appointment of the receiver, except the members of the legal profession?—Wherever the persons who are exclusively benefited are the solicitors, I have said I would not give a receiver; but I cannot fix any limit beyond that, abridging the rights of a creditor to take proceedings to raise his demand.

4201. You would give a power to the court to refuse the appointment of receivers whom you are now compelled to appoint, wherever the court thought it inexpedient or unnecessary?—Wherever they were satisfied that the petitioner could not be benefited by it, and that it was a suit instituted merely for the purpose of making costs for the solicitor's benefit and not the creditor's; and I would make that the test.

4202. Mr. *Ellice.*] Do you think it is fit to give the court power to exercise its discretion in that way, or should not the power be regulated by law?—It is by law that I propose to regulate it.

4203. You stated just now, that you would use your own discretion in refusing a receiver under certain circumstances?—What I meant to convey was, that the law should authorise the Lord Chancellor or other Equity Judge to look into that circumstance, and whenever he was satisfied that that would be the result, to refuse to appoint a receiver, which power, I think, he has not at present.

4204. That is not the law now?—That is not the law now.

4205. Sir *E. Perry.*] If receivers were not to be appointed for small claims upon land, what remedy will the holders of those claims have against the possessors of the land?—None, that I know of, but a sale.

4206. A sale cannot take place in very many cases where there are charges of a small amount arising out of the land?—In Ireland that would be the majority of cases. There is often great difficulty in completing the proceedings for a sale.

4207. Take a rentcharge of 10*l.* a year, out of an estate of 1,000*l.*, a creditor could not claim a sale in such a case?—A rentcharge is a separate case altogether, and in that case it is the only remedy as against the land.

4208. So also an annuity of 10*l.* a year?—Precisely; that is a similar case.

4209. The claim of 10*l.*, not being either a rentcharge or an annuity, but directly upon the land, if the estate was a large estate the creditor could not proceed to a sale of that land, could he?—If the annuitant is armed with the power of enforcing his rights by distress or by entry, bringing an ejectment for the purpose of getting into possession, the court will not grant a receiver. The present Lord Chancellor very recently in the case of Brady *and* Fitzgerald so decided, after reviewing all the cases and overruling the case of Fay *and* Fay, in which the Court of Exchequer had held that in all annuity cases the courts of equity have a concurrent jurisdiction, and will appoint a receiver, though the party had a remedy at law.

4210. If the power of appointing a receiver is refused to small creditors, would it not be much more prejudicial than to creditors of a large amount?—I think so, and with less reason.

4211. Mr. *Whiteside.*] I was referring to cases where the party prayed a sale, and has the right to enforce a sale; even in those cases the great majority of receivers are appointed?—Yes.

4212. But in the case put by the Honourable Member where the party has no remedy by a sale, it would be reasonable that he should have, and he has now an opportunity of obtaining a receiver?—Yes.

4213. Sir *J. Graham.*] Mr. Brewster was asked this question, "If the Legislature of this country hastily were to pass an Act, that except in the cases of minors and lunatices there should be no receivers in Ireland, would that strike at the very root of credit in Ireland?" and Mr. Brewster's answer is this, "In my opinion it would; in my opinion the country could not do, that is to say, it would be equal to an Act to declare that the owner of the land should not have power over it." He was then asked, "At all events, to the extent of borrowing?" to which he replied, "Of course I receive your question in the sense you put it to me, and my answer is wider; I mean it exactly to apply to your question." What is your opinion with reference to those answers of Mr. Brewster's?—I quite agree with

with them; in the present state and condition of Ireland, I think it would have the effect which Mr. Brewster has stated.

4214. Supposing it be necessary to continue this system of granting receivers in Ireland in the manner in which it has hitherto been done, would it not be expedient in any Bill for amending the practice in the Court of Chancery in Ireland, to define specifically the cases in which the remedy of the receivers should be granted, and to repeal all the existing provisions in the statutes upon that subject? —I think so, because in many cases at present I do not think the Lord Chancellor can, according to the settled practice of the court, which is the law of the court, exercise any discretion, and cannot refuse a receiver.

4215. The law upon this subject is, in point of fact, very complicated, various provisions having been at different times enacted, giving powers upon judgments and upon mortgages, and various other claims, for the appointment of receivers? —Certainly; I think there is nothing that requires so much revision as the law in regard to judgments in Ireland at present. Having had occasion to consider the subject very often in matters that came before myself, my opinion is that there is no man in Ireland at present who understands what the law is with respect to judgments, or the rights of parties having judgments.

4216. And therefore, especially with respect to this system of receivers, it would be essential to define in an Act of Parliament the precise cases in which the Court of Chancery might grant receivers upon land?—So far as it could be done, I think it would be desirable.

4217. Mr. *Whiteside.*] Is not this Judgment Mortgage Act extremely simple; is not the effect simply this, that where a judgment is registered as a mortgage against specified lands, the creditor has all the rights of a mortgagee against the lands specified?—No doubt.

4218. Is not that intelligible enough?—Perfectly so.

4219. How could the credit of Ireland be shaken by refusing to give a receiver to a person who, according to the evidence given by Master Murphy, and by the paper he produced to us in the Master's offices, can get a sale in some cases in six months, in some nine, and in the longest 12 months upon the footing of his charge, under the 15th section of Sir John Romilly's Act?—I think that every Act of Parliament that limits the right of a person to enforce his demand strikes at the root of credit, at least, of being able to borrow advantageously.

4220. In England the practice (I am not speaking of the law) of the Court of Equity is, not to grant receivers in the cases in which they are granted in Ireland?—There is no doubt in the world that the practice is more limited in England.

4221. And yet public credit is not damaged by that practice?—I do not think that they are at all so fond of borrowing as they are in Ireland, and their necessities are not at all the same; the social position is different.

4222. Is not a vicious practice or a vicious law likely to engender bad habits? —No doubt.

4223. Will you state to the Committee distinctly the damage that would be done to credit by saying to a mortgagee, or a judgment creditor registered as a mortgagee, who has at present the right to have a receiver, "Enforce your remedy as quickly as you please, but we will not give you a receiver pending your proceedings to a sale"?—If the party was assured of an early sale, I do not know that it would be any damage.

4224. Master Murphy explained his evidence to us, that under the 15th section, in a common mortgage case, he can give a sale, I think he said, within nine months?—In many cases I have sold within nine months myself.

4225. What is the beneficial object of appointing a receiver pending a proceeding that may end by a sale in nine months?—I do not think that those were at all ordinary cases, in which you could sell within nine or 12 months either. I think in the majority of cases where you had to investigate the title, you would find it a considerably longer time; and I think that merely making a law, based upon those simple cases, would not be a legitimate mode with respect to the whole country.

4226. *Chairman.*] You are aware that, according to the present state of the law, a judgment is a security upon which money is largely obtained in Ireland? —Yes, no doubt.

4227. And is not credit more readily obtained by the judgment debtor, from the facility that the creditor has under that judgment of receiving the interest

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upon his demand by the appointment of a receiver, than if it is withheld ?—Certainly, and by reason of his being subject to less costs in taking the security.

4228. Mr. *De Vere.*] Does not any system which tends to deteriorate the value of land also tend to affect credit, the credit being based upon the land ?—If it is so, I take it that it would, but I do not see exactly how they are so immediately connected.

4229. If the present receiver system has a tendency to deteriorate the value of land, it must have a tendency to affect credit ?—I take it that it would.

4230. Mr. *Whiteside.*] While this Act of the 12 & 13 Vict. c. 95, was in force in Ireland, was public credit affected by the existence of that law, to your knowledge ?—I cannot give an answer to that question ; I do not know that it was.

4231. And, in fact, it was not directly repealed as to the amount of 150 *l.*, but indirectly by the effect of that clause of the Judgment Mortgage Act, to which I have drawn your attention ?—Yes.

4232. Have you read the Receiver Bill ?—Yes.

4233. Do you see any objection to the repeal of the old Irish Act, that gave a receiver where there was no sale prayed ?—No ; I always thought it would be most desirable to repeal an Act that enabled a mortgagee to get a receiver at once who did not pray a sale.

4234. Do you see any objection to the clause providing that a sale should be ordered with a view to avoid the appointment of a receiver at as early a stage as possible ?—I think that most desirable.

4235. Do you see any objection to the clause granting power to the court to refuse a receiver where less than a year's interest is due, and where, as it is expressed, the applicant is not likely to derive any benefit from the appointment of that receiver ?—I see no objection to the principle of that.

4236. Do you approve of it ?—Certainly.

4237. What do you say to a receiver not being appointed except where the property is 200 *l.* rental, except in the cases excepted ?—I do not approve of that ; I agree in the limit I have mentioned, that is, that the court shall not grant it in cases where they are satisfied that it will not be for the benefit of the creditor, but merely for the benefit of the solicitor.

4238. Sir *E. Perry.*] If the Court had the power of appointing a receiver where the ends of justice required it, would not that be effectual in the case where the rental is only 200 *l.* a year. If the inquiry before the Judge is so complicated that it is likely to last some years, would not the appointment of a receiver be called for to promote the ends of justice ?—No doubt.

4239. Would not a clause skilfully framed, give the Judge the power to do justice in that particular case ?—I think it would.

4240. Mr. *Whiteside.*] Have you read the proviso in clause 5 ?—Yes.

4241. Do you see any objection to fixing the appointment of a receiver at 200 *l.* rental, subject to the conditions specified in that clause. If it be necessary, it would be better to put him into possession himself, and make him account as mortgagee in possession ?—With respect to proviso No. 1, I do not see how it is possible that a Judge can act upon it, I do not understand the clause, " provided nevertheless, that before such order shall be made, it shall be shown to the Court or Judge that the same will not operate unjustly to any other incumbrancer whose incumbrance shall be duly registered."

4242. You were the remembrancer of the Court of Exchequer ?—I was.

4243. There was a gentleman appointed to assist you, Mr. Hamilton ?—I was at first, second remembrancer; on Mr. Blake's retirement, I was made chief remembrancer, and Mr. Hamilton was then made second remembrancer of the Court.

4244. How long did he continue in office ?—My impression is that it was about seven years.

4245. Then his office was abolished ?—Yes.

4246. He got full compensation for life ?—Yes, he was a patent officer.

4247. Was Mr. Caraw O'Dwyer's office abolished ?—Yes.

4248. He got full compensation for life ?—Yes ; his was a patent office also.

4249. What was his full salary ?—His office was paid by fees, but it was above 3,000 *l.* a year.

4250. On what fund were all those salaries thrown ?—Upon the Suitors' Fee Fund, in the first instance ; but if that became exhausted, it was to be made up out of the Consolidated Fund.

4251. When

4251. When you were remembrancer, did you yourself tax the costs, or were they taxed under your superintendence?—Yes, up to the time of Mr. Hamilton's appointment.

4252. You taxed the costs of the Equity Exchequer?—Yes.

4253. Afterwards there was an office appointed for that purpose, and the taxation was transferred to that office?—No; Mr. Hamilton had the taxation of the costs.

4254. And after the abolition of the Exchequer, the taxation went over to the taxing-master of the Court of Chancery?—Yes.

4255. Has not the fact of the arrear being transferred to that court clogged it ever since?—So I have heard.

4256. What other duties have you to discharge besides the duties of Receiver Master?—I audit and pass all the accounts of the county treasurers in Ireland; they are declared by me twice a year, namely, after every assizes; the money accounted for in that way last year was 1,093,410 *l.* 8 *s.* Under the Act 7 & 8 Vict. c. 106, the accounts of the Finance Committee of the County of Dublin, are also audited and declared by me, a separate debit and credit account being kept for every barony; the amount for the year 1855 being 37,383 *l.* 5 *s.* 4 *d.* The claims of the Crown against counties in Ireland have also to be investigated and reported upon by me, under the Act 2 & 3 Vict. c. 50; the Treasury have also the power of referring to me the audit of any accounts with respect to monies the Crown is concerned in. The accounts of the Commissioners of Charitable Donations and Bequests in Ireland are also audited in my office under the Act of 7 & 8 Vict. c. 97; and the number of those accounts audited in the year 1855, was 306; and the amount 220,733 *l.* 4 *s.* 8 *d.* The accounts of the collector-general of rates in the city of Dublin, under the Act 12 & 13 Vict. c. 91, are audited and declared in my office. The amount of those accounts for the year 1855 was 278,914 *l.* 0 *s.* 3 *d.*, The accounts of receivers under the court at present in my office, appointed since 1850, amount to 307,509 *l.* rental. The total amount of the money accounted for under the above accounts in my office is 1,937,949 *l.* every year, and that with the accounts of the old receivers under the Court of Exchequer, makes the amount audited in my office every year upwards of 2,000,000 *l.*

4257. If double the number of receivers in the Court of Chancery were put under your charge, would you be competent to perform the labour without considerable assistance?—Most certainly not. I should require a much more extensive staff than I have at present. I think that a person at the head of an office of that kind having a sufficient staff under him could probably control the audit and do the duty of the office, but I should require a very considerably larger staff than I have at present.

4258. Generally speaking, does that Receiver Bill of mine meet your approbation; is it an improvement on the present system?—I think that the principal objection to that Receiver Bill of yours is, that it provides for a great number of things that are unnecessary, because it is the present law, under orders of the Court. The late orders of the Court have anticipated very much the provisions of your Bill.

4259. But you cannot make a lease for a tenant for seven years or fourteen years certain?—Certainly not; and one part of my former evidence is, that if I could I would not.

4260. Did you, when you were Master, sell estates?—Constantly, both while I was remembrancer, and afterwards.

4261. And did all the Masters of the Court investigate titles, and sell estates, and distribute the proceeds, and do they do so still?—Yes, constantly.

4262. Sir *J. Graham.*] Could you hand in to the Committee a copy of Mr. Whiteside's Receiver Bill, marking the clauses which you think are not requisite on account of existing orders of the Court?—I have a Bill marked at present, and against a great number of the clauses I have written, "This is done already."

4263. Can you put in a copy so marked?—Certainly. The course of practice at present in my office of getting district receivers is very much impeded by the law as it at present exists with respect to recognizances. Under one of the rules of the Court I am directed to consolidate receivers, and to appoint one man in a district over all the properties in that district, and the main difficulty that I have in that is the necessity of his giving security by recognizance.

4264. Having heard what Mr. Malins says, are you not at all shaken as to the

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policy of keeping up the receivers to the full extent in Ireland?—I never had any doubt that it was the most desirable thing in the world to reduce them. I am perfectly persuaded that it is a most mischievous thing.

4265. You agree with Mr. Brewster that the state of credit in Ireland, and the peculiar circumstances, altogether negative the practice in this country; are you really strongly of that opinion after all that you have heard?—I do not mean to say that; it is a matter of opinion.

4266. Mr. *Whiteside.*] The adopting a rental of 200*l.* a year would reduce the number of receivers materially?—Yes, it would reduce them very much. I have given a table in my former evidence, which shows that.

4267. According to your general opinion and experience, would the refusal to appoint a receiver, except over a rental of 200*l.* a year, have the effect of reducing the number of receivers to a very great extent?—No question about it, to a very large extent.

[*The Witness delivered in the following Return:*]

RETURN showing Average Per-centage of Expense incurred for Law Costs upon Management of Properties in the Court of Chancery.

No.	Names of Causes.	Yearly Rental.	Number of Years under Management of Court of Chancery.	Gross Receipts.	Law Costs.	Per-centage on Rents received of Law Costs incurred.	OBSERVATIONS.
		£. s. d.		£. s. d.	£. s. d.		
1	M. R. Greene, a minor	120 – –	4	992 – –	23 – –	5¼	House property, Five accounts passed. Vacate
	Ditto (extended)	1,107 – –	3	3,140 – –	200 – –		Ditto and extension.
2	Gandon, a minor	1,080 – –	4	4,362 – –	200 – –	4½	– – ditto – – Three ditto.
3	Moore *v.* Tilly	1,851 – –	2	2,027 – –	77 – –	3¾	– – ditto – – One ditto.
4	Wybrants *v.* Wybrants	579 – –	2	947 – –	48 – –	5	Land – – – One ditto. Vacate.
5	Sandes *v.* Osborne	529 – –	1½	648 – –	43 – –	6⅔	Ditto – – – One. Vacate.
6	Murray *v.* Ferguson	350 – –	¾	486 – –	28 – –	6	House property, One ditto. Vacate.
7	Corcellis *v.* Corcellis	230 – –	2½	447 – –	44 – –	10	– – ditto – – Two ditto.
8	Kelly *v.* Alexander	170 – –	3½	464 – –	49 – –	10½	– – ditto – – Three ditto.
9	Callaghan *v.* Callaghan	150 – –	4	448 – –	47 – –	10½	– – ditto – – Three ditto.
10	Dempsey *v.* Dowdall	252 – –	1¼	261 – –	32 – –	12	– – ditto – – One ditto. Vacate.
11	Stafford *v.* Morris	40 – –	2	65 – –	19 – –	29	– – ditto – – One ditto.
		TOTAL – – – £.		14,287 – –	810 – –		

Of the above properties, the average per-centage of expense for Law Costs on Estates with rental between 350*l.* and 2,000*l.* a year is under 5 per cent.
" " " under 350*l.* a year is 11¼ per cent.
All Costs, Civil Bill Ejectments, &c. are included in the above.

33, Dawson-street, Dublin, 1 May 1856.

Hardy & Townsend, Land Agents.

Richard Malins, Esq., a Member of The House; Examined.

R. Malins, Esq., M. P.

4268. *Chairman.*] YOU are a Member of the English Bar?—I am.

4269. And one of Her Majesty's Counsel?—Yes.

4270. You are extensively engaged in practice in the Court of Chancery in this country?—I am, and have been so for some years.

4271. Will you be good enough to state generally to the Committee the cases in which, according to the present law and practice of the Court of Chancery in England, that court will appoint a receiver over lands at the instance of a person in the position of creditor or incumbrancer?—That would depend, a good deal, upon particular circumstances; but the general rule would be, that over lands, upon the instance of a creditor, it would only be done where it is pretty apparent that the personal estate is insufficient to pay the debts, and that the real estate must ultimately be resorted to. In a creditor's suit, or an administrator's suit, the court would take possession of the estate; that is, by appointing a receiver; but

but it would only do so where it was apparent that it would be necessary to have recourse to the land.

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4272. I now refer to the instance of a judgment operating as a charge upon land under the statute passed in the first year of the Queen. Suppose the case of a judgment creditor instituting a suit to enforce an equitable lien which he has, under that Act, against his immediate debtor, would the Court, in such a case, give him a receiver?—Not as a matter of course. The ordinary course would be a decree for a sale. A judgment creditor, having a lien upon the estate, would file a bill for the sale of the estate, or a sufficient portion of it to satisfy his charge. If it was apparent to the Court that the sale of the corpus would not be sufficient, but that there would probably be a deficiency, it would immediately take possession of the rents and profits for the benefit of the creditor.

4273. In the case which I have put of a judgment creditor, suppose that there was an arrear of interest due to him upon his judgment, would that at all operate in influencing the discretion of the Court as to the appointment of a receiver?—That would depend upon his own conduct. If it arose from negligence, it it would not influence the Court; but if the arrear of interest existed in spite of him, and the Court saw that it was necessary to protect him by taking possession of the estate, then a receiver would be appointed.

4274. In those cases of suits by creditors, the Court exercises a discretion as to the appointment of a receiver; that discretion being regulated by what is likely to be the ultimate event?—Certainly. You are always obliged, in the Court of Chancery, to show a proper case for the appointment of a receiver.

4275. Even since the passing of 1 & 2 Vict. c. 110?—Yes, unless the circumstances occur which I have stated, namely, that there is a debt unsatisfied, the creditor being unable to obtain satisfaction, and it is apparent to the Court upon the evidence that the corpus of the estate, when converted, will not be sufficient to satisfy the creditors.

4276. Turning to a case independent of the lien created by that statute of Victoria for a judgment creditor, do the Court, in any other instance, appoint a receiver at the suit of a judgment creditor against his debtor?—In order to appoint a receiver, the person making the application must have a charge upon the estate. We do not grant a receiver upon the application of a legal mortgagee, because he has the power of entering into possession. If the mortgagor will not acquiesce in his taking possession, he can enforce it by an ejectment, by virtue of his legal estate; therefore it is a universal rule never to appoint a receiver upon the application of a legal mortgagee.

4277. You mean, of course, in the case of suits instituted to foreclose a legal mortgage?—In a suit instituted in any shape whatever.

4278. Sir *J. Graham.*] Is it not usual now, on the part of insurance companies in lending money upon mortgage, to have a judgment?—I should say not. It is about 13 years since I ceased to practise as a conveyancer, and I am not aware that any new practice has grown up; but in my days, and I think it is very much the same now, no mortgagee having an adequate security would consent to a judgment; the judgment would only give him a general lien upon the estate, while the mortgage conveys an express lien.

4279. *Chairman.*] In addition to the mortgage security giving an express lien, the Right Honourable Baronet meant that the party insisted also upon a judgment, which gave him a general lien upon the mortgage?—That is not the general rule.

4280. Mr. *Ellice.*] Is not it a common practice to have a mortgage on one estate of a person intending to borrow money, which is not to extend over his general property?—Certainly. A gentleman has an estate in Middlesex, which he mortgages, and does not intend to mortgage his Surrey estate, and therefore no prudent man borrowing upon mortgage could be advised to take a judgment, making a charge upon all the land that he has or may have.

4281. *Chairman.*] In the case of suits, of which we have been speaking, instituted by a mortgagee to foreclose; in this country the mortgagee does not pray, nor does the Court give him, a sale of the estate?—We had no power in this country to sell an estate at the suit of a mortgagee until 1852. The practice was, ever since I was called to the Bar, in taking mortgages, to take a power of sale in the mortgage deed; every prudent and well-advised mortgagee took a power of sale, but if he omitted to do so, then he could not obtain a sale, he must depend upon his right of foreclosure, till those very important Acts which were brought

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in by Lord St. Leonards in 1852. Now the Court has a discretion, in every case of mortgage, either to give a decree of foreclosure, or a decree for sale, and in many instances in which I have been counsel, and it is the constant practice when there is a foreclosure suit, and it appears for the benefit of the parties, either that the property is mortgaged so near to its value, or from any other circumstances, that ultimately a sale must take place, the Court exercises its discretion by making an immedate order for sale.

4282. Taking cases occurring before the Act of 1852, and assuming no power of sale in the mortgage, the mortgagee could not have a sale?—Not a mortgagee with a conveyance; he must depend upon his deed with but an equitable mortgagee; that is, a man depending upon the mere deposit of the title-deeds was in a better condition.

4283. Before the Act of 1852 was passed, what the Court did for the legal mortgagee was to give him the estate by a foreclosure decree?—Yes; a foreclosure decree is merely in substance this: The mortgagee being the plaintiff, and the mortgagor being the defendant, assuming that there is only one mortgagee and one mortgagor, though there are very often many, it is in effect an order, that if the mortgagor does not pay the mortgagee's principal, interest and costs, including the costs of the suit, he stands debarred of his right of redemption, and from that time the estate is absolutely the mortgagee's; except in certain cases, the decree being made absolute, it becomes the absolute estate of the mortgagee.

4284. In such cases the Court do not give the mortgagee a receiver, because he might go into possession, his suit being to deliver the estate to him as his estate?—Certainly.

4285. Supposing in such a case, before 1852, the mortgagee had not a legal estate, and he could not go into possession by reason of certain circumstances, would the Court have appointed a receiver?—In every case where the interest is in arrear, the second mortgagee may file a bill for the appointment of a receiver, because he has not the power of taking possession, not having a legal estate; but in such a case the receiver would be appointed subject to the first mortgagee.

4286. Since 1852, in a suit instituted by the mortgagee, will the Court of Chancery in England appoint a receiver unless it is apparent from the evidence before it that it is necessary for the security of the parties?—Not unless it is necessary; if the interest is in arrear, and the mortgagee has been unable to obtain his interest by the exercise of ordinary diligence, in that case the Court will protect him in the appointment of a receiver.

4287. Suppose a mortgagee came into the Court of Chancery, saying, "There is an arrear of two years' interest due to me which I cannot get, and I seek a receiver," would the Court in such a case appoint a receiver?—I think they would at once. If the property was necessarily sold, the proceedings in Chancery now are so rapid in all branches of it, the Court would say the property will so soon be sold and converted into money, that it is not worth while to go to the expense of appointing a receiver. If the estate was of considerable value, and the mortgage-money small in comparison, and yet the mortgagor, from bad management, did not keep the interest down, a receiver would be appointed; if the property was mortgaged nearly to its value, the Court would make an immediate order for sale, and in the course of a very few months it would all be turned into money, except in extraordinary circumstances. The whole thing would be in money in a very short time, and no receiver would be appointed; but in the first case a receiver would be appointed, and there would be no order for a sale.

4288. Sir *E. Perry.*] A small creditor could get a receiver with greater facility than a larger one?—Yes, certainly. A man is generally very well satisfied if he gets his interest kept down; if the interest of the mortgage is regularly paid, the man does not want the estate to be sold.

4289. *Chairman.*] Is the Court guided by the amount of the plaintiff's demand only, or does it take into account, if brought before it, the other charges upon the estate?—In a foreclosure suit everybody is foreclosed; therefore he brings all those who are behind him, and that would depend a good deal upon the conduct of the defendants. If the defendants said, "We are satisfied," and there was only the plaintiff to be satisfied, they would put the defendants upon the terms of keeping the interest down; but the Court, as a general rule, never appoints a receiver except in a case of actual necessity, where the ends of justice require it;

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it is slow to do so. In the case of trustees it never will interfere with a trustee receiving the rents, unless there has been misconduct or insolvency, or it sees that the trust property is unsafe; there must in every case be some particular reason to induce the Court to take possession of the property from the parties.

4290. The Court of Chancery in this country, in the appointment of receivers, regulates the appointment by the exercise of a wise discretion, having regard to the circumstances of the particular case?—I think so; and I think that the discretion is very wisely exercised. I have sometimes seen cases where the Court has been rather too slow to appoint a receiver, but I have seldom seen a case in which there has been too much haste.

4291. If it appears to the Court that by the appointment of a receiver the creditor is not likely to derive benefit, the Court will not appoint a receiver?—Certainly not.

4292. A judgment creditor in theory in this country may have a receiver?—In that particular case which I have pointed out, where he has a lien upon the estate, and has not been able to obtain his interest, and comes for a sale, and the Court sees that the corpus of the estate is not sufficient, a receiver would be appointed.

4293. In theory they may have a receiver, but the right is limited by a discretionary power in the Court?—Quite so. If you look to the wording of the 1 & 2 Vict., the Act for the abolition of arrest on mesne process, the judgment there is made a lien upon land, just as if the judgment debtor had charged it by writing under his hand. The consequence is, that the judgment creditor is an equitable mortgagee; he is just in the same position as a person having a mere charge.

4294. You say that the Court is very unwilling to appoint a receiver?—I think that the natural leaning is against the appointment of a receiver. The plaintiff who asks for the appointment of a receiver must prove some of those cases, or others showing the necessity for it.

4295. I presume that that unwillingness to appoint receivers springs both from the expense entailed by the appointment, and from its leading to a defective management of the estate?—No; there is a great expense, because every receiver has to be paid a commission; the accounts have to be passed; those are material considerations; and there is also the consideration of the reluctance to interfere with the possession of property by the real owner of it, unless there is a necessity; and it is a very common practice in the Court of Chancery that there are persons before the Court interested in an estate, and some say "we have confidence that they will deal with the rents properly," and others not. In that case it is not uncommon to appoint some of the parties beneficially interested as receiver, without salary; sometimes with security without salary, and sometimes without security with salary.

4296. Some person is selected who has a large interest, and who is perfectly solvent?—Yes; of course no person would be appointed unless he was perfectly solvent.

4297. When a receiver is appointed, you mentioned that he gives security?—Yes.

4298. How does he enter into that security?—It is a recognizance with sureties.

4299. Is the law of this country the same as the law of Ireland, that a recognizance when inrolled binds all the lands of the party?—Yes; it is one of the most stringent securities a man can give.

4300. It would bind all his real estate which he then had, or might thereafter acquire?—Certainly; there is no great danger in it, because the accounts having to be passed every half-year, the utmost risk that you run is the loss of a half-year's rent.

4301. And there is very little risk if a party interested is appointed?—Yes; the rule of the Court being, that the receiver must pass his accounts every half-year; if that is properly enforced, there is very little risk; I have known instances where parties have allowed a receiver to go on year after year without calling him to an account, and then a large balance is found in his hand, and he cannot pay, and the sureties are called upon, and infinite distress has arisen out of that; but the Court will not allow the parties now to neglect their own interests; if they do not take the proper steps in the cause, they are summoned before the Judge's chief clerk to know why they do not do so.

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4302. The Court will not allow the system of having a great arrear of causes in which the parties will not stir?—No. Nothing can be more detrimental to the interests of the suitors and the public generally than a great delay in the administration of justice. I have had occasion in evidence lately before the Appellate Jurisdiction Committee of the House of Lords to enforce that, with regard to the great evil that has arisen in hearing appeals before the House of Lords.

4303. Is this discretion conferred upon the Court of Chancery by statute, or is it inherent in the Court?—It is inherent in the Court; it is part of its principles and practice.

4304. Is half-yearly accounting the practice in England?—Yes.

4305. Does not that involve considerable expense?—No; I am told that they may be passed for 13*s.* 4*d.* I believe the accounts are passed for 13*s.* 4*d.*

4306. That would not involve the preparation of the account?—It is the receiver's duty; he is bound to keep his account. I will assume that the receiver is remunerated; the remuneration depends upon circumstances; the ordinary rule is five per cent.

4307. Mr. *De Vere.*] It is considered part of his duty as receiver to keep his accounts in a manner in which they are always intelligible?—Most undoubtedly. He says, These are my receipts and payments, and the balance in my hands is so much.

4308. *Chairman.*] Does he pay out of his poundage the expense of employing a solicitor to prepare and pass an account for him?—I think so, but the parties to the cause would do it for him.

4309. Mr. *H. Herbert.*] Must he necessarily pass his account through the medium of a solicitor?—It is his duty to take it in every half year and pass it.

4310. *Chairman.*] Would an account be received in the chief clerk's office unless it was brought in by a solicitor?—I do not see any occasion why he should employ a solicitor. Supposing *A. B.* is appointed the receiver of an estate, it is his duty every half year to pass his account upon a common summons; he goes before the chief clerk and does it, and swears to the truth of it; it must be done in the presence of the parties.

4311. Suppose the case of an annuity charged upon lands in this country, the annuitant would have a right to go into possession if that annuity was in arrear?—Then the Court would have a right to restrain him. If he has no right of distress in the terms to secure it, no legal estate, and is therefore, in fact, without remedy, except by the consent of the party who granted the annuity, and his annuity is in arrear, then the Court would grant a receiver upon his application.

4312. The Court would perhaps go further, because the annuity creditor would have no right to sell, and his only remedy would be by a receiver?—Yes; but the case of an annuitant not having the power of selling the property would be a stronger case than that of a receiver for a mortgagee.

4313. Independently of the cases of suits instituted by individual creditors, if what is called an administration suit is instituted, in which all the personalty must be administered, and the realty sold, the Court at once appoints a receiver?—Yes; if there is an executor or an administrator properly discharging his duty, he is the defendant of the creditor's suit, and the Court would not take the management of the property out of his hands.

4314. In the case of a real estate, supposing there was no person but the heir at law, would the Court leave him in possession?—It depends entirely upon circumstances. If it is apparent that the estate must be sold, and the heir has no interest in it, then the Court would appoint a receiver.

4315. Are there any other cases in which the Court appoints a receiver, save the cases of suits instituted by creditors, incumbrancers, or administration suits?—I should think that that would embrace the great number of cases.

4316. Has an owner of tithes any right to a receiver in England similar to the right in Ireland by a tithe rentcharge?—I should think that he has; but there would be scarcely a necessity for that, because under the Tithe Commutation Act every farmer is bound to pay the amount of his commutation.

4317. Mr. *Whiteside.*] Is there any law or practice in the Court of Chancery in England which will enable a legal mortgagee, who does not pray a sale, and who has nearly 18 months' interest due to him, to apply to the Court to get a receiver, and keep a receiver in existence for the sole purpose of paying him his interest?—

interest?—I should say certainly not; in the case of a legal mortgagee a bill filed for the appointment of a receiver would be dismissed with costs; but if he is an equitable mortgagee, that is, a second mortgagee, and his interest is not kept down, on a bill being filed the mortgagor appears in Court, and says, I will keep the interest down, and the Court would not appoint a receiver even in that case. The course would be this: if I were in the case, I must give notice of motion, and then the counsel on the other side appears on behalf of the mortgagor, and says, there is an arrear of interest, and I will pay it within such a time, and will keep down the interest. The motion would stand over, and the Court would never for an instant entertain the idea of appointing a receiver.

4318. The Court of Chancery in England will not undertake the difficult task of managing estates for parties as their agents, to receive the rents for them?—It is no part of the business of the Court of Chancery in England to manage the estates of parties who are capable of managing them themselves, and who have the power to do so; the principle of the Court of Chancery in England is to help only those who require help.

4319. In a case where a party prays a sale, and can have a sale on a mortgage, or any other security entitling him to a sale within the period of twelve months, would the Court be slow or eager to appoint a receiver?—I think the Court in that case would not appoint a receiver unless it saw that the parties were entirely unworthy of trust, and could not be permitted to receive even a half year's rent; but even in that case they would put the mortgagor upon an undertaking to receive the rents, and pay them into the Court. They would do anything to avoid the expense and inconvenience of a receiver.

4320. With reference to judgments the Act of Parliament made a judgment an equitable lien upon the debtor?—Yes.

4321. And it gave a judgment creditor a right to come into equity and enforce a sale?—Yes.

4322. Would he as a matter of course, by merely asking for it after he had filed his bill, get a receiver?—I think not; what he would get as a matter of course, would be a decree for a sale of a sufficient portion of his estate to pay him, but he would not obtain a receiver unless the interest were considerably in arrear, and he, by the exercise of reasonable diligence, had not been able to obtain it. Suppose a man is a judgment creditor for 5,000 *l.*, and five years' arrears of interest, and he files a bill for an estate worth 20,000 *l.*, and the Court sees that there is an estate worth 20,000 *l.* over and above all the charges upon it, the Court in that case would not appoint a receiver, but would say, "You have lain by and allowed your interest to get in arrear; you have a lien upon the estate abundantly sufficient to pay you, and we will put the machinery in work that will pay you in a sufficiently reasonable time."

4323. And in certain other cases the Court has been in the habit of putting into possession a person that could be confided in, to receive the rents, but exempted from the costs and poundage, and the unpleasantness attendant upon the office of a receiver?—Whenever the parties desire that it should be done, and the Court sees that it can be done with safety to the parties interested, it will do it.

4324. Did you ever know a receiver appointed with all the machinery of the Court of Chancery to recover 25 *l.*?—No; and I do not think I ever shall.

4325. Sir *J. Graham.*] Would the rule which prevails in England, of preferring sales to the appointment of a receiver, apply *à fortiori* to Ireland, where there is a peculiar facility for the sale of encumbered estates with a parliamentary title?—I should say that it would. I do not think that there is greater facility for selling in Ireland, except the circumstance of the parliamentary title; that is the difference.

4326. If you were told, that since the Encumbered Estates Act came into operation in Ireland, 18,000,000 *l.* worth of encumbered property has been sold, and that there are still 1,500 receivers in Ireland, would not those two facts, taken together, lead you to the conclusion that there is something vicious in the state of the law with respect to receivers?—I should say excessively so; I cannot conceive anything more mischievous to the interests of society than such a state of things.

4327. And each receiver finding security and recognizances affecting land?—I should

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should say that it would be difficult to conceive of a state of things more prejudicial to the interests of society.

4328. The effect of the sale of encumbered estates being very much defeated by the operation of those receivers and recognizances?—Yes.

4329. It would appear to you, therefore, that the remedy hitherto applied, of the facility of the sales of encumbered property with a parliamentary title was insufficient while the law of receivers remained untouched?—I should think so.

4330. Mr. *Whiteside.*] Would your opinion be less decisive if you were informed that a sale could be had in the Court of Chancery in certain cases, under Sir John Romilly's Act, within nine or twelve months?—From what I have already said, it must be apparent that I entirely approve of the practice of the Court of Chancery in England in being slow to appoint receivers, and what I have already said has shown that in such a case as that, the Court would not appoint a receiver.

4331. And your opinion would be, that the object of all rational legislation should be to facilitate a sale, and refuse to appoint a receiver under the Court of Chancery, unless where justice requires it?—I certainly think so.

4332. Sir *J. Graham.*] You would incline to give every facility to a sale in preference to retarding a sale and appointing a receiver?—Certainly; when this state of things exists, that a man who has a mortgage debt cannot keep down his interest, and is unable to pay the principal upon being demanded, I believe it will be found generally, that the period of sale has arrived, and the sooner you sell the better for him and everybody else.

4333. If you were told that the circumstances of Ireland were peculiar in this respect, that the personalty is to a small amount, and not given generally as a security, but that land is the general security, and upon land therefore credit mainly rests for advances, you would still be of opinion that that state of affairs would not vary the general rule, but you would be favourable upon the whole to giving facilities of sale rather than the power of receiving rents?—Yes; it would be an additional reason.

4334. And you think that the credit is unsound which rests upon that system of receivers, as contrasted with a facility of sale?—I should say so. The expense of a receiver must always be considerable. If a man has to bear the expense of a mortgage debt, which is ordinarily five per cent., and has in addition to that to bear the expense of a receiver, it is obvious that ruin must come; therefore it is that I say that when a man cannot pay his interest, and within a reasonable period after demand cannot either pay or find some person to pay the mortgage debt for him, I think the period of sale has arrived for his interest and for the interest of society.

4335. *Chairman.*] Where a suit is instituted for a sale, and the fund is likely to be a deficient one, the Court takes some means to secure the intermediate rents for the creditor?—Certainly; whenever it is apparent to the Court that the fund is an insufficient one, either for the mortgagee or the general creditor, or a specific creditor, it will either, by the appointment of a receiver, or by an undertaking of the party, or some other means, prevent the property getting into the possession of the person who is the nominal but not the real owner.

4336. From your extensive knowledge of the proceedings in the Court of Chancery, will you state whether the operation of the Act of 1852, which was brought in by Lord St. Leonards, has been very beneficial?—In my opinion, and I have expressed that opinion before in the House of Commons, and I stated it the other day in a Committee of the House of Lords, and I express it here now, I do not believe that any Acts of Parliament are of greater benefit to the British public than those Acts of 1852. I have been a practitioner in that Court for some years, and I have stated publicly in the House of Commons, that in my opinion the practice of the Court of Chancery before 1852 was a disgrace to any civilised society, and is now highly creditable. I believe, upon the whole, the system prevailing in the Court of Chancery now is rapid, it is inexpensive, it is mild and considerate.

4337. Sir *J. Graham.*] Danger was always anticipated, and some apprehension was felt that the enlarged functions of the first clerks of the judges would lead to the vicious practice of the Masters before they were abolished; is that apprehension groundless?—I think entirely groundless.

4338. You are well satisfied?—Quite; because there is this marked difference: When causes were heard before 1852, I have been surprised at the course that was taken.

taken. In arguing a case before the Lord Chancellor on the first day of Easter Term, the 15th of April last, I had occasion to point out to his Lordship that this was a case illustrating the lamentable practice of the Court of Chancery only in 1850 or 1851, I am not quite certain which, in which, in the administration of an estate, the testator had left two sons and a daughter; the daughter was my client. The two sons were dead, and the daughter survived. There was a reference to the Master to ascertain who were the next of kin of that testator living at the time of his death, which involved a great expense, although, as I stated to the Lord Chancellor, that we all knew as well that he had left two sons and a daughter, who were his sole next of kin, as that I now addressing you know that you are Lord High Chancellor of England, and yet the practice was to refer it to the Master at Southampton-row, to inquire what we all knew, who was the descendant of this man.

4339. Judging from your experience in England, you would say that it is sound policy to abolish a system in Ireland of reference to the Masters, and even to abolish the office of Master altogether, and give to the judges chief clerks nominated by themselves?—Most undoubtedly.

4340. What would you say to appointing judges and leaving it to the Executive Government to nominate the chief clerks and the staff?—I should say certainly, that it would be most objectionable; it might work, but there would be great danger of it not working. When the reference was made to the Master's office in Lincoln's Inn, a decree was drawn up referring it to the Master to do so-and-so, and the judge lost sight of it entirely until it came back some years afterwards, when everything relating to it was forgotten, whereas now the reference is to the judge himself in chambers, and the chief clerks are merely his assistants, and in every case of difficulty they appeal to him, and he keeps the causes under his view, and it is all one system like a merchant's business; and it would be as objectionable therefore to force a chief clerk on a judge, as it would be that a merchant carrying on business should have another person appoint his clerks.

4341. Does your practice lead you to say that the operation of the Act of 1852 is in conformity with the theory?—As far as my experience goes daily, I think it has realised almost every expectation that could have been entertained with regard to it.

4342. Mr. *Whiteside.*] Are you aware that before the large reform in England, a partial reform was effected by giving original jurisdiction in certain cases to the Masters in Ireland?—I have heard so.

4343. And that worked with great benefit to the suitor?—I have heard so.

4344. You have been a conveyancer?—I was called to the Bar in 1830. I practised exclusively in chambers as a conveyancer till 1842. I then took a Court practice, and in a very short time I found it necessary to give up conveyancing altogether. I was appointed one of Her Majesty's Counsel in 1849, and for 12 years I have had very considerable experience.

4345. There exists in Ireland an Act of Parliament, called the Encumbered Estates Court Act, which enables that court to convey or sell encumbered estates and to give a Parliamentary title to the purchaser?—Yes.

4346. What would you think of the plan of making the Court of Chancery a conveyancing court for all the unencumbered property of the country, secured by a Parliamentary title, to be worked out by two Vice-Chancellors, who were at the same time to transact all the court business of the Court of Chancery, modified and reformed in the manner which you yourself have pointed out?—I should think it very objectionable in principle. I do not think that it would be practicable without a material increase of the staff of the Court of Chancery; but I confess I do not see the propriety of it, nor the necessity for it. There is not that difficulty in making titles in the great majority of cases that people imagine.

4347. Are you now speaking of England?—Yes, I am confining my evidence entirely to England.

4348. Have you not had conveyances and titles in Ireland before you?—I have had a great many before me. For five or six years I had a great deal of Irish business.

4349. Are you not aware that the law of real property is just the same in Ireland as in England?—Yes.

4350. And that many great estates in Ireland and England are held under the same title-deeds?—Yes.

4351. Is it a wise system of legislation, where the law of real property is the same

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same in both countries, to introduce a new system in Ireland before it has been made use of in England?—I should say that it is very inexpedient to make a distinction between the two countries. I have upon more than one occasion said that a principle which is correct for Ireland must be so for England.

4352. Is there not a marked difference between giving the security of a Parliamentary title to a decree of a court of justice ordering a sale, where the court have a right to sell, and making the Court of Chancery a private conveyancing court for all private owners or alleged owners, in fee simple, when they choose to call upon the Court to convey an estate for them to anybody whom they may nominate?—I think so; and I think that there is not the occasion for it, because, from my experience, having given opinions upon a great number of titles in my time, and now being intimately conversant with the practice in these matters, I should say that there is not that great difficulty in making out titles that is generally supposed. In a great majority of cases the titles are very distinct and clear, and the improved practice of the Court of Chancery has also altered that very much; because, formerly, if a man entered into a contract to purchase an estate, and was unable or unwilling to complete his contract, he would refuse, and would thereby oblige the vendor to file a bill against him for specific performance; and then came in all those miserable delays of the Court of Chancery to favour this party; but now, if a bill is filed, it comes on for hearing within six weeks; I do not think it could possibly be protracted beyond two months. The court then says, "What is the meaning of this; is it a question of title?" The purchaser says he is not satisfied with the title. The court says, "What is the point between you?" The answer is, "The vendor is not the tenant in fee-simple, he is only the tenant for life." The court says, "Very well; argue that case; what does it depend upon, a will or a deed?" The deed is read, and the will and the case is argued and decided then and there. We ascertain what is the question between the parties, and then it is decided; or, if they are not ready, the case stands over for a few days, and is then decided at once.

4353. Is there not a wide distinction in principle between giving a Parliamentary title to a decree of a court of justice, and the Court of Chancery assuming to itself the duty of conveying every estate of every kind that is brought to it by persons who are under no difficulty or incumbrance, and who desire merely to make use of the court to convey an estate to A, B, or C.?—I think there is a great distinction. My present impression is, that I should regret to see it adopted. I should require a great deal of evidence to satisfy me of the propriety of such a mode.

4354. Would it not be open to the perpetration of great frauds if a party having no litigants opposed to him could persuade the Vice-Chancellor that he was the absolute owner when he was not?—I am unable to see how such a system could work. If a bill is filed for the sale of an estate because it is mortgaged, as the mortgagor cannot pay, or if proceedings are taken in the Incumbered Estates Court in Ireland, which must be by the person having a charge upon the estate, he brings before the court all those who are known to be interested in it; but if A. B., assuming that he is seised in fee, comes to the Court of Chancery and says, "Sell my estate for me," how is the Court of Chancery to know who are the parties interested in it?

4355. Sir *E. Perry.*] Is not that principle involved in the Incumbered Estates Bill, which has been read a second time in the House of Commons?—Yes.

4356. Mr. *Ellice.*] Where there is a difference between the practice of the courts of Ireland and England, would it not be expedient to adopt any admitted improvement in either country in the other country?—I should say so, certainly.

4357. And to do so as quickly and with as little delay as possible?—Yes; if it can be shown to us in the Court of Chancery in England, that there is any practice in the Court of Chancery in Ireland which is better than ours, we shall be happy to adopt it.

4358. *Chairman.*] You would equally condemn a court in England, like the Incumbered Estates Court in Ireland?—I do not say that; I do not think that there is a necessity for it in this country; I think that the machinery of the Court of Chancery, as it exists now under the Acts of 1852, affords everything that we want.

4359. Supposing an Incumbered Estates Court did exist in England; that is, a court enabling you to sell summarily, and give a Parliamentary title to incumbered estates, would you equally object to having that jurisdiction enlarged here by enabling

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enabling that court to sell unincumbered estates?—Certainly, I should. I was about to point out my reasons for considering that such a thing could not safely work. Suppose A. B. having an unincumbered estate desires to sell it, as the law exists at present he has no difficulty in doing so; if he has any apprehension as to his title, he has only to lay it before an experienced professional man before he enters into the contract, and if there are any little errors, which are called flaws of title, which an unwilling purchaser may take advantage of if so disposed, but in which there is no real substance, he can provide against that by conditions of sale or special terms of contract; he does not therefore want the aid of a court. But suppose we decide that there shall be such a court, how is it to be worked? He asserts that he is seised in fee and entitled to a sale, and he asks the court to assist him by giving a Parliamentary title. The object of coming to the court would be that the purchaser should have a Parliamentary title, which would give the vendor an advantage, by greater facility of sale, and by obtaining a better price. How is the court to ascertain that he is seised in fee? It must refer it to some officer to investigate the title; it cannot be done otherwise.

4360. Mr. *Ellice.*] And it would be necessary in such a case that there should be some representative of dormant or contingent interests?—Yes; and how are you to ascertain that you have got them?

4361. It would be very unsafe to give a Parliamentary title without ascertaining that?—It appears to me that it would be the grossest infringement of the rights of parties. I will put a case: A. B. comes and says, "I am tenant in fee, unincumbered, and I desire to sell my estate." The court will not take his assertion that he is seised in fee. The court cannot read the abstract of title when sitting to administer justice; it may be 10 pages, or it may be 500 pages. A piece of paper may be the abstract of an estate worth 100,000 *l.* a year; and it may be that a property worth 1,000 *l.* a year has a larger title. Then the title must be referred to the officer of the court to look into the title of A. B., and report whether he is seised in fee. If that officer reports that he is, and that is a correct report, no injury will be done; but suppose that the officer reports erroneously that he is seised in fee when he is only tenant for life, upon the faith of this report the estate is sold; the money is handed over to A. B.; there is a Parliamentary title in the hands of the purchaser; A. B. has the money: where is the person to go to that was entitled? He cannot go to the land, for there is a Parliamentary title, and he cannot go to the money, for that is paid over.

4362. Suppose the same precautions were taken which are now taken in the Incumbered Estates Court in regard to the sale of insolvent estates, might not security be obtained in that event?—No, for this reason; because in the Incumbered Estates Court you have the parties beneficially interested before you; in the other case you have no means of calling the parties before the court, except upon the investigation of the title by the officer of the court. Suppose I were the conveyancing counsel of the Court of Chancery, here is a petition of A. B., asking for the sale of his estate, containing the assertion that he is seised in fee, subject only to certain specified incumbrances, or to no incumbrances. To ascertain that fact, I may have to read through an abstract of title of one page, or 200 pages, or 2,000 pages, possibly; suppose I miscarry, as I may well do, because it involves difficult points of law, and cases of the construction of a will; and suppose I report erroneously that he is seised in fee absolutely; all this is decided in favour of A. B. in the absence of any opponent.

4363. *Chairman.*] Supposing a petition for the sale of an estate to be presented by a party claiming to be the owner of the estate, and he seeks the sale of his own estate, and says, "I wish to sell this estate; I am tenant in fee-simple; I owe a judgment debt of 1,000 *l.*; let that be paid, and let the remainder be paid over to me;" does the existence of the judgment make the slightest difference in the case?—No; the judgment creditor would file his bill.

4364. I am assuming that a person professing to be the owner presents his petition for a sale, and says, "I am tenant in fee-simple, but I owe a judgment debt of 1,000 *l.*," would the existence of the judgment make any difference, in your opinion?—I think not.

4365. We have at present existing in Ireland a tribunal selling upon the petition of the owner, and the only thing necessary to give a jurisdiction is for the owner to show that there is an incumbrance of some sort; would it make any difference, in your opinion, that that tribunal has been in existence for six

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years without the error which you speak of having been committed?—A case of a single occurrence must be a rare case.

4366. Mr. *Whiteside.*] Does it much matter in principle whether the owner is the plaintiff or the defendant?—I do not think it does.

4367. Mr. *Ellice.*] Supposing it to be decided in Parliament to extend the right which is now possessed by incumbered proprietors to obtain a Parliamentary title to proprietors who are not incumbered, what securities would you suggest against the possibility of that Parliamentary title being given to the injury of dormant or contingent interests?—I find it difficult to suggest what the remedy would be; a Parliamentary title being given, you could not interfere with the purchaser; and the money being brought into the court, and handed out to the vendor, who may possibly have spent it, you could not resort to that; therefore that peril which I have stated must necessarily take place; there must be still this same danger; and the difference I desire to point out is this: when you confer a Parliamentary title, you absolutely bind A. B. as the person supposed to sell; but in that case, in the Court of Chancery, if it turns out that he is not absolutely entitled, but upon his death some other person becomes entitled to the estate, while you sell the estate upon the faith of a private opinion, and the purchaser takes it upon the advice of his legal adviser, and it being advised that the man has an absolute estate, and it turns out that he has only a qualified estate, the person taking it can follow it into the hands of the purchaser; and thus no injustice is done.

4368. *Chairman.*] Save to the purchaser?—Yes; and that is his own fault, for not looking carefully into the matter; but those cases are so very rare, because he is going to pay his money, and will take care to be very cautious.

4369. Mr. *Whiteside.*] Could the Vice-Chancellors of England, in addition to their transacting all the business of the court, transact all the conveyancing business in England?—It is out of the question. The Vice-Chancellors are much more worked in England by the new system than they used to be. Before 1852, when I practised in the Court of Chancery, we considered, and I consider still, that a Vice-Chancellor who sits at 10, and rises at half-past 3, and during the whole of that time is engaged in hearing light petitions, one every two or three minutes, undergoes great exertion of his mental faculties, and after hearing heavy and difficult matters, we generally consider that a man's energies are pretty well exhausted; but under the new system, at least twice a week, the Vice-Chancellor goes into chambers after he has done his business in the court.

4370. Would that same officer, having discharged that duty, be competent, in your judgment, to sit down at night, or in his vacation, and read with his own eyes abstracts of title to convey the unincumbered property of England?—If any Vice-Chancellor told me that in addition to the duties which he has now to discharge, he would undertake to read any abstracts of title, I should consider that an indication of his insanity.

4371. Sir *E. Perry.*] Suppose additional Vice-Chancellors were appointed, having also the general business of the Court of Chancery coming before them, would they be able in their own person to read those lengthy abstracts of title you describe?—I should think, if you wanted to take the most foolish proceeding that would render your proceedings contemptible to the whole world, you would allow Vice-Chancellors to investigate titles.

4372. Mr. *Henley.*] It has been suggested here that this might take place, that any number of Vice-Chancellors doing the ordinary judicial business during term might employ themselves during the vacation in looking over the abstracts of title submitted to the court for sale; what would be your opinion of such a proposition as that?—It could not be made by any man who had the slightest practical acquaintance with the judicial business of this country. The labours of the profession of the law on the part of the Judges and on the part of the counsel are so severe while they last, from an early hour of the morning to a late hour at night, that, long as the vacations may appear to be (my opinion is, they are not one day too long), and in order that our Vice-Chancellors, the Master of the Rolls, and the other Judges may have their mental and bodily faculties preserved in full vigour, without which no man can properly perform judicial duties, you must not overwork them.

4373. Mr. *Whiteside.*] Is there any branch of business that requires more freshness and strength of mind than that of reading and deciding upon difficult abstracts of title?—I practised 12 years as a conveyancer, and I have since that practised

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practised in the Court of Chancery, first for seven years as a draughtsman, one of the most laborious occupations a man can have, as it used to be; and I was liberated from this labour by being appointed Queen's Counsel, who never write anything, but read opinions and argue cases; but such is my recollection of the labour of perusing and advising upon abstracts of title, that if I were to be appointed Lord Chancellor of England, or to any judicial office whatever, and it were made as a condition that I should read 20 pages of abstract of title per diem, no amount of money and no extent of dignity would induce me to accept the office; it would be ridiculous; it would be like putting the mistress of the house to be kitchen-maid.

4374. Sir *J. Graham.*] What would be the effect upon the mind of the Judge, if, instead of returning refreshed by a little leisure, he should resume his judicial functions wearied by perusing abstracts of title?—My opinion is, that he would not be able to perform those functions at all.

4375. Mr. *Whiteside.*] Could any worse system be appointed than that of having two Vice-Chancellors to discharge the business of the Court of Chancery during the day, and to determine upon abstracts of title absolutely to all the world in the evenings and in the vacation?—My opinion is, that anything more ridiculously contemptible could not be done.

4376. *Chairman.*] Supposing you heard that a Judge sat six days in the week doing judicial business, and took papers home with him in the evening to read, and occupy his vacation in reading abstracts of title, would you put down that gentleman as insane?—I should say that he did not belong to the ordinary race of mankind, certainly. He must have an extraordinary avidity for legal pursuits; it may be his business to do that morning, noon, and night, as it was mine when I was a conveyancer, and therefore the force of circumstances may oblige him to do it; but if I am told that there are to be found, in human society, men who would voluntarily undertake that, I should like to look at them. With regard to the appointment of receivers, I may state that the instances in which receivers are appointed in the Court of Chancery are so few, that I doubt very much whether there are 20 in each court in the year.

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APPENDIX.

Appendix, No. 1.

PAPERS delivered in by *G. J. J. Murphy*, Esq., 28 April 1856.

INCUMBERED ESTATES.—*Ex parte* LORD BLAYNEY.

(Copy, MINUTES.)

MASTER OF THE ROLLS.

TUESDAY, 11 December 1849.

IN the Matter of the Act to facilitate the Sale of Incumbered Estates in Ireland.
Ex parte LORD BLAYNEY, Petitioner.

MR. BREWSTER, for Petitioner, Lord Blayney, proceeds to move Notice of Fifth November, One thousand Eight hundred and Forty-nine, to confirm Master's Report in this Matter, dated Twentieth September, One thousand Eight hundred and Forty-nine; Mr. Fitzgerald for same; Mr. Attorney-general for Thomas Isaac Dimsdale.

NOTICE dated Fifth November, One thousand Eight hundred and Forty-nine, read.

COURT,—Mr. Thomas Isaac Dimsdale, by the Attorney-general as his counsel, and also personally appearing in open court; and Lord Blayney, by Mr. Brewster as his counsel, in open court so consenting and desiring,—Let the original contract in the petition in this matter mentioned, bearing date the day of November, One thousand Eight hundred and Forty-eight, be set aside, and let the parties thereto be released therefrom, and let the said petition in this matter be dismissed, and let all parties abide their own costs of the proceedings in this matter; and let Thomas Isaac Dimsdale, and Mr. A. C. Pallas, his solicitor, they so undertaking, hand over to Lord Blayney, or to his attorney thereto lawfully authorised, within Ten days after service on them of this order, the said original contract in petition mentioned, and also all deeds, maps, surveys, and other documents whatsoever in their custody, power, or possession relating to the estates of said Lord Blayney.

Appendix, No. 2.

Appendix, No. 2.

STATEMENT of the TAXING MASTERS of the COURT of CHANCERY in *Ireland.*

THE attention of the Taxing Masters of the Court of Chancery in Ireland was necessarily called to the Report of the Commissioners appointed to inquire into the Incumbered Estates Court in Ireland, dated the 21st May 1855, which contains the following paragraph, viz.: "We think it right to add, that the Taxing department of the Incumbered Estates Court has been conducted with great efficiency; but it will appear from the returns of the corresponding department in Chancery, that there is a considerable arrear there, and that some assistance ought to be provided, and some arrangement made to insure the more prompt taxation of costs."

The Taxing Masters do not consider that this observation was warranted, to so great an extent, by their returns made to the Commissioners; and it strikes them that that paragraph has made an invidious comparison between them and the taxing officer of the Incumbered Estates Court. At all events, it has induced an opinion that the duties of the Taxing Masters in Chancery in Ireland had been inefficiently performed, whilst those of the same department in the Incumbered Estates Court have been conducted with "great efficiency;" and the Taxing Masters are the more confirmed in this belief, from the circumstance that one of the witnesses examined before the Committee now sitting on the Bill for the Regulation of the Court of Chancery in Ireland was asked (as they have been informed), "Whether it was not the fact that the taxing officer of the Incumbered Estates Court taxed more costs than all the Taxing Masters of the Court of Chancery."

The Taxing Masters of the Court of Chancery, therefore, feel themselves called upon respectfully to say, that such is "not the fact;" and beg leave, in their own justification, and in sustainment of the offices they have the honour to fill, to enter into some explanation as to the performance of their duties, so contrasted with the duties performed by the taxing officer of the Incumbered Estates Court; and they do so, not with a view of disparaging that gentleman, whom they believe to be a very efficient officer, but merely in justice to themselves, to remove what appears to them to be a very erroneous impression as to the relative quantity of business discharged by the respective officers of the two courts; and they are obliged to submit this statement to the Committee, as none of the Taxing Masters in Chancery have been examined before them.

It appears by the Appendix to the Report of the Commissioners of Inquiry (page 12), that the taxing officer of the Incumbered Estates Court was appointed in the month of October 1849, and that from that time to the month of December 1854, a period of five years, he taxed costs to the amount (as lodged for taxation) of 434,294*l.* 12*s.* 2*d.*

As no inquiry has been made (to the knowledge of the Taxing Masters) in reference to the particulars of the duties performed by the officers of each court, it is to be presumed that the relative estimate, as to the efficient performance of their respective duties, has been formed solely from the amount in money of the bills of costs taxed in each court.

If this be so, the Taxing Masters submit that nothing can possibly be more fallacious.

The amount of costs in money can be no criterion whatever for estimating the relative labours of the officers of the two courts, or for ascertaining the extent of work performed, or the time occupied by them respectively. The number of charges or items in a bill which are to be considered and adjudicated on gives a far better and more accurate criterion of the time and labour expended on the taxation.

As an example, take two bills, one from each court, as lodged for taxation.

1.—*Chancery Bill, as lodged for Taxation.*

	No. of Items.	Amount.
Governors of Erasmus Smith's schools -	2,812	£. 937. 7. 1.

2.—*Incumbered Estates Court Bill, as lodged for Taxation.*

	No. of Items.	Amount.
Lord Mornington's Estate - - -	1,913	£. 4,541. 0. 3.

It

Appendix, No. 2.

It is plain from this comparison that the mere amount in money will form no just criterion as to the comparative amount in labour of each officer.

In one of the above bills the taxing officer of the Incumbered Estates Court taxed nearly five times the amount in money with one-third less labour, taking the number of items as the just criterion, the bill in the Incumbered Estates Court containing only two-thirds of the items to be examined and adjudicated upon as compared with that of the bill in the Court of Chancery.

The above bills are given merely as an illustration of the principle contended for, without meaning to have it supposed that the same disparity exists in every bill taxed in each court.

The Taxing Masters have been enabled to procure the particulars of 12 bills as taxed by the officer of the Incumbered Estates Court, and which are given in the first Schedule hereunto annexed, with the number of items and the amount claimed in each, and which are not given in any case in the Schedule set out in the Appendix to the Report of the Commissioners of Inquiry.

The total amount of items in these 12 bills (which is the true criterion of work) is 12,756, and the amount in money as lodged for taxation is 17,916*l.* 18*s.* 7*d.*

Twelve Chancery bills (specified in the same Schedule, hereunto annexed) have been taken, giving as nearly as possible the same number of items, viz. 12,760, and they give in money only, as lodged for taxation, 5,531*l.* 17*s.* 3*d.*

(The Chancery bill already referred to in the case of Erasmus Smith's Schools is not included in the 12 bills given in the Schedule hereto).

So that, judging from the amount in money in these bills, the Incumbered Estates Court officer appears to have taxed more than three times the amount in money of those taxed by the officers of the Court of Chancery, whilst in fact the amount of labour, as estimated by the number of items (which it is submitted is the true criterion) was the same.

A number of other Chancery bills have been likewise taken (*see* Schedule No. 2, hereunto annexed), distinct from the foregoing 12 bills, without reference to the number of bills, but so that the aggregate amount of items of the bills selected should be not less than 12,756; and these last bills give an amount in money, as lodged for taxation, 6,321*l.* 12*s.* 11*d.*, from 12,755 items, still leaving about the same relative proportion, or nearly so, in money, as in the case of the 12 other bills above specified.

Calculations have been further made, from the books of the Taxing Masters in Chancery, to ascertain what number of items, in the ordinary course of taxation, would be necessary to produce a sum of 17,916*l.* 18*s.* 7*d.*, and the result is that it would take 33,499 items and 20 bills to produce 17,924*l.* 15*s.* 7*d.*; whilst in the Incumbered Estates Court it takes only 12 bills and 12,076 items to make that sum in money. In other words, there would be nearly three times a greater number of items to be examined and adjudicated upon by the officers of the Court of Chancery than in a bill of the same amount in money in the Incumbered Estates Court.

See Schedule, No. 3, annexed.

This, the Taxing Masters conceive, fully explains why the amount of costs taxed yearly by the Taxing Masters of the Court of Chancery is not equal to the amount in money of those taxed by the officer of the Incumbered Estates Court.

It appears, from the annual returns furnished to the Lord Chancellor by the Taxing Masters, that they taxed, in the five years from 1849 to December 1854, 901,405*l.* 19*s.* 10*d.* of miscellaneous costs, together with 62,503*l.* 10*s.* 10*d.* costs of passing receivers' accounts, making together the sum of 963,909*l.* 10*s.* 8*d.* (the particulars of which are given in the Schedule hereunto annexed, No. 4), giving a sum of 321,303*l.* 3*s.* 6*d.* as taxed by each Master in the five years; which, computing according to the labour as measured by the number of items, would be, at the very least, double the value of the same amount taxed in the Incumbered Estates Court; that is, equivalent to 642,606*l.* 7*s.* for each of the three Masters, as compared with 434,294*l.* 12*s.* 2*d.* taxed by the officer of the Incumbered Estates Court.

The great difference in the amount of money, as compared to the number of items in bills in each court, may probably be accounted for by the heavy expenses allowed in the Incumbered Estates Court for surveying, mapping, printing, and advertising, all of which are charged for in large sums in gross, and form merely so many items in the solicitor's costs in that court.

Take an instance of this in a bill of costs mentioned in the Incumbered Estates Court, in the Appendix to the Report of the Commissioners of the Inquiry, namely, "Bateman's Estate," page 138; the amount of costs allowed is stated as 2,120*l.* 18*s.* 1*d.*, and the amount charged in that bill for advertising and printing, 1,046*l.* 4*s.* 11*d.*, and the amount for surveys, 567*l.* 18*s.*; making together the sum of 1,614*l.* 2*s.* 11*d.* out of 2,120*l.* 18*s.* 1*d.*, the total amount of the costs.

The items for printing, surveying, &c., which form so large a portion of every bill of costs in the Incumbered Estates Court, are ascertained with little labour, as the Court has sanctioned a tariff, by which such charges are easily measured.

But independent of the magnitude of the bills, either in the number of items or the amount of money, in each court, there are a variety of causes which enable the officer of the Incumbered Estates Court to perform his duties with far greater facility, and consequently in a shorter time, than the Taxing Masters in Chancery can possibly do. The

Appendix, No. 2.

officer of the Incumbered Estates Court has only one schedule of fees, and one set of rules or orders, regulating the practice of that court, to attend to in the taxation of costs; he had no arrear of business to struggle with at the commencement; all bills in that court are nearly alike, and the taxation of two or three bills must in point of principle guide him in all the rest, and there is, comparatively speaking, scarcely any discussion before him by contending parties.

The Taxing Masters in Chancery, on the other hand, have no less than nine schedules of fees regulating their taxation, and to each of which, according to the period of time at which the business was done, they have to attend and be regulated by.

See Schedule, No. 5, hereunto annexed.

They have various general orders of the Court of Chancery and Exchequer, pronounced at different periods, also to attend to. They have upwards of 16 different kinds or classes of costs to tax, all varying from each other, and all subject, in a great measure, to different principles of taxation. They have moreover frequently to tax costs under decrees which direct one party to get the costs of suit, so far as he has succeeded, or in relation to some part of the relief sought, and to pay costs perhaps, or to bear his own costs, so far as he has failed; also under decrees apportioning costs in a variety of forms; and also under decrees on hearings on reports and exceptions, in which some of the exceptions taken are allowed, with costs, and some are disallowed, with costs to the opposite party; some either allowed or disallowed, without costs at either side, and sometimes costs of exceptions are decreed to be set off, one against the other; all which lead to and render necessary a minute examination of the briefs and documents, and evidence in the cause, in order to a proper division and apportionment of the costs, which necessarily occupies a considerable portion of the officer's time, and involves considerable labour, which cannot be estimated by the amount of the bill in money, or even by the number of the items.

The Taxing Masters have also to take accounts between the parties in bills taxed between a solicitor and his client under the Solicitors' Act, which are very often exceedingly troublesome and intricate, the labour of which in like manner cannot be estimated by the number of items in the bill of costs, or the amount of it.

With respect to any arrear existing in the Taxing Masters' offices, upon which the Commissioners of Inquiry have observed in the paragraph of their Report before referred to, and in respect of which they have made so unfavourable a comparison, it is to be observed that when the office of Taxing Master was established in the year 1845, and the business transferred to him from the Masters in Ordinary in Chancery, an arrear was handed over to him from the Masters in Ordinary of upwards of 1,000 untaxed bills, amounting to about 50,000*l.*; and immediately after his appointment there was a great influx of bills into the office; the Taxing Masters then appointed had to struggle with this accumulating arrear for three years before two additional Taxing Masters were appointed, and the Taxing Master not being able to discharge the current business of the office, the arrear previously existing was unavoidably increased, and the effect of that accumulation has been continually felt in the Taxing Masters' offices, without any fault of theirs.

In the year 1850 the Equity jurisdiction of the Court of Exchequer was transferred to the Court of Chancery, and a considerable arrear of bills of untaxed costs was handed over from the Court of Exchequer to the Taxing Masters in Chancery, and other Exchequer bills have been since brought into their office for taxation, from time to time, and the Taxing Masters have taxed costs of this class to the extent of between 60,000*l.* and 70,000*l.*

In addition to the ordinary and current business of the Court of Chancery, a great number of bills (both of Chancery and Exchequer costs) have been prematurely thrown upon the Taxing Masters by the operation of the Incumbered Estates Court, in suddenly stopping suits that were pending in these courts, and requiring the costs to be taxed before they had come to their legitimate termination, in order to distribute the funds in the Incumbered Estates Court.

These costs would, but for the proceedings in the Incumbered Estates Court, have come in gradually, some of them perhaps not for a considerable time, instead of thus coming in in a body, and causing a premature arrear in the offices of the Taxing Masters.

Had it not been for the arrear commenced with in the year 1845, the addition of the Equity Exchequer costs in the year 1850, and the premature pressure arising from the operation of the Incumbered Estates Court, the Taxing Masters feel convinced that there would have been no arrear in any of their offices, and that they would have discharged the current business of the court.

The Taxing Masters trust that they have thus satisfactorily shown that the invidious comparison instituted between them and the taxing officer of the Incumbered Estates Court is not well founded, and that they have sufficiently accounted for any arrear existing in their offices.

Dated this 31st May 1856.

(signed) *John O'Dwyer.*
Edward Tandy.
Thos. Reilly.

Four Courts, Dublin.

SCHEDULE, No. 1,

Referred to in the annexed Statement, containing Twelve Bills of Costs from the Incumbered Estates Court, and Twelve Bills of Costs from the Court of Chancery; showing the Number of Items, and the Amount of Costs in each Court.

BILLS OF COSTS IN THE INCUMBERED ESTATES COURT.

Title of Cause.	Number of Items.	Amount Claimed.	Amount Taxed.
		£. s. d.	£. s. d.
Lord Mornington's Estate	1,913	4,541 – 3	3,798 18 5
Earl of Shannon's ditto -	3,415	3,060 15 3	2,260 1 2
John Bateman's - ditto -	1,370	2,452 5 10	2,120 18 1
Lord Oranmore's - ditto -	1,040	2,903 12 5	2,395 3 3
Daniel Connor's - ditto -	903	889 15 4	788 13 7
M. Smith's - - ditto -	844	522 14 10	405 2 6
Bickford's - - ditto -	463	331 4 9	264 12 7
Roberts's - - ditto -	516	747 6 4	632 6 7
Wright's - - ditto -	358	423 5 –	362 6 2
Grace's - - - ditto -	520	358 – 9	298 13 2
Ellis's - - - ditto -	659	471 17 7	246 8 3
Raymond's - ditto -	755	1,215 – 3	1,018 4 4
	12,756	17,916 18 7	14,591 8 1

BILLS OF COSTS IN THE COURT OF CHANCERY.

Title of Cause.	Number of Items.	Amount Claimed.	Amount Taxed.
		£. s. d.	£. s. d.
Brabazon *v.* Tyncham -	7,207	2,883 11 3	2,049 8 5
Beggs *v.* Sadlier - -	1,045	345 12 7	183 15 –
Reed *v.* Savage - -	1,066	663 16 6	486 9 2
Scott *v.* Reeves - -	1,190	892 16 5	690 12 4
Casey, deceased - -	359	145 8 6	118 11 2
Boddington *v.* Langford -	732	371 9 4	286 1 –
Geraghty *v.* Massy - -	392	114 2 9	78 17 11
Saunders *v.* Saunders -	282	141 9 3	116 11 8
Barrington *v.* Grady - -	188	87 15 5	41 3 4
Fletchers, Minors - -	152	34 4 2	30 13 1
Toohy *v.* Smithwick - -	86	31 19 –	19 11 10
Walsh *v.* Kane - -	61	18 12 1	18 4 2
	12,760	5,730 17 3	4,119 19 1

SCHEDULE, No. 2,

Referred to in the annexed Statement, containing Twelve Bills of Costs taxed in the Incumbered Estates Court, and Six Bills of Costs from the Court of Chancery; containing the same Number of Items, and showing the Amount of the Costs in each Court in Money.

BILLS OF COSTS IN THE INCUMBERED ESTATES COURT.

Name of Cause.	Number of Items.	Amount Claimed.	Amount Taxed.
		£. s. d.	£. s. d.
Lord Mornington's Estate	1,913	4,541 – 3	3,798 18 5
Earl of Shannon's ditto -	3,415	3,060 15 3	2,260 1 2
John Bateman's - ditto -	1,370	2,452 5 10	2,120 18 1
Lord Oranmore's - ditto -	1,040	2,903 12 5	2,395 3 3
Daniel Connor's - ditto -	903	889 15 4	788 13 7
M. Smith's - - ditto -	844	522 14 10	405 2 6
Bickford's - - ditto -	463	331 4 9	264 12 7
Roberts's - - ditto -	516	747 6 4	632 6 7
Wright's - - ditto -	358	423 5 –	362 6 2
Grace's - - - ditto -	520	358 – 9	298 13 2
Ellis's - - - ditto -	659	471 17 7	246 8 3
Raymond's - ditto -	755	1,215 – 3	1,018 4 4
	12,756	17,916 18 7	14,591 8 1

BILLS OF COSTS IN THE COURT OF CHANCERY.

Name of Cause.	Number of Items.	Amount Claimed.	Amount Taxed.
		£. s. d.	£. s. d.
Tennant *v.* Tennant - -	6,774	3,765 – 6	2,850 2 1
Woods *v.* M'Curdy - -	1,360	604 3 4	447 8 7
Carroll *v.* O'Connor -	1,575	765 1 10	548 10 10
Roche *v.* Roche - -	1,218	465 19 1	92 11 6
Stack *v.* Auchenleck -	849	328 8 10	293 6 8
Tuthill *v.* Tuthill - -	979	392 19 4	332 17 7
	12,755	6,321 12 11	4,564 17 3

Appendix, No. 2.

SCHEDULE, No. 3,

To which the foregoing Statement refers, showing the Number of Bills from the Court of Chancery which produce the Sum of 17,916 *l.* 18 *s.* 7 *d.*, that being the Amount of 12 Bills from the Incumbered Estates Court, as specified in Schedules No. 1 and No. 2; and the Number of Items in such Chancery Bills.

NAME OF CAUSE IN CHANCERY.	Number of Items.	Amount Claimed.			Amount Taxed.		
Chancery Bills:		£.	*s.*	*d.*	£.	*s.*	*d.*
Gurley *v.* Gurley	3,945	2,690	1	2	1,726	9	5
Dudgeon *v.* Carley	2,496	1,247	4	1	957	14	9
Attorney-general *v.* Drummond	1,450	1,680	9	4	1,541	3	2
Tennant *v.* Tennant	2,501	1,426	8	3	1,065	19	9
Handcock *v.* Tennant	1,668	815	14	1	528	10	1
Newton *v.* O'Bree	2,299	933	11	6	395	16	3
Radcliffe *v.* Boyle	950	314	5	–	235	9	3
Meares *v.* Woodrooffe	539	226	10	2	93	19	4
Kingston *v.* Irwin	4,069	1,833	11	9	1,340	9	2
Rorke *v.* O'Neill	1,080	406	19	7	242	2	7
Baldwin *v.* Belcher	1,830	1,282	16	4	985	10	–
Same *v.* Same	1,834	316	15	–	63	–	8
King, a lunatic	640	588	16	7	482	5	8
Simcocks *v.* Moody	1,284	806	3	8	770	2	10
O'Connell *v.* Macnamara	1,966	501	5	8	182	16	4
Fitzmaurice *v.* Saddleir	793	448	19	6	377	1	–
Brooke *v.* Smith	1,378	705	–	8	488	14	7
Pratt *v.* Jackson	1,224	629	15	4	542	1	4
Hungerford *v.* Beecher	659	520	19	9	318	14	8
Attorney-general *v.* Crawford	894	549	8	2	339	16	–
	33,499	17,924	15	7	12,677	16	10
12 Bills from the Incumbered Estates Court, as specified in Schedules 1 and 2	12,756	17,916	18	7	14,591	8	1

That is, 17,924 *l.* 15 *s.* 7 *d.* claimed in Chancery, costs arose from 33,499 items; whilst 17,916 *l.* 18 *s.* 7 *d.* claimed in Incumbered Estates Court, costs arose from only 12,756 items.

SCHEDULE, No. 4,

To which the foregoing Statement refers, showing the Amount of Costs Taxed by the Taxing Masters in Chancery, in the Five Years from 1849 to 1854.

	£.	*s.*	*d.*	£.	*s.*	*d.*
Miscellaneous Costs Taxed:						
In the year 1850	–	–	–	162,904	–	2
„ 1851	–	–	–	186,337	13	–
„ 1852	–	–	–	201,291	11	7
„ 1853	–	–	–	176,171	16	5
„ 1854	–	–	–	174,700	18	8
				901,405	19	10
Costs of Receivers' Accounts Taxed during the same Period:						
In the year 1850	9,752	1	11			
„ 1851	13,224	–	5			
„ 1852	13,056	15	2			
„ 1853	14,052	10	11			
„ 1854	12,418	2	5			
				62,503	10	10
			£.	963,909	9	8

SCHEDULE, No. 5,

Appendix, No. 2.

To which the foregoing Statement refers, showing the different Classes of Costs which are Taxable by the Taxing Masters in Chancery.

1. Ordinary Costs of Suits.
2. Costs of Partition Suits which are Taxed under particular Regulations.
3. Costs under the Chancery Regulation Act, 1850.
4. Costs of Receivers and Guardians.
5. Costs of Executors and Administrators.
6. Costs of Charitable Trusts.
7. Costs in Lunacy Matters.
8. Costs in Minor Matters.
9. Costs under the Tithe Rentcharge Act.
10. Costs under the Leasehold Conversion Act.
11. Costs under the Trustee Acts.
12. Railway Costs, and Costs under the Land Clauses Consolidation Acts.
13. Miscellaneous Costs as between Solicitor and Client, on Requisition of Client.
14. Costs under the Solicitors' Act, under Order of Court, which directs Accounts to be taken, and Balance struck between the Parties.
15. Costs under the Mortgage Act.
16. Costs under the Judgment Acts; and all
17. Costs of the Equity Exchequer Suits, Receivers' Costs, Petition Matters, &c., and all Proceedings in that Court prior to the Transfer of the Jurisdiction of that Court to the Court of Chancery.

Appendix, No. 3.

INCUMBERED ESTATES COMMISSION.

RETURN, showing the NAMES, AGE, DATE of APPOINTMENT, Amount of SALARIES and other EMOLUMENTS, of all Persons holding Office in the INCUMBERED ESTATES COURT; with the Dates of such of them as have been called to the Bar, or enrolled as Attorneys.

OFFICE.	NAME.	Age.	Date of Appointment.	Salary.	When called to the Bar.	When admitted an Attorney.
				£. s. d.		
First Commissioner	The Right Hon. John Richards	65	July - 1849	1,549 16 10	Easter, 1811	—
Second Commissioner	Mountiford Longfield, LL.D.	53	July - 1849	2,000 - -	Easter, 1828	—
Third Commissioner	Charles James Hargreave, LL.D.	37	July - 1849	2,000 - -	Trinity, 1844	—
Master	Stephen Woulfe Flanagan, Esq.	39	August - 1849	1,000 - -	Michaelmas, 1838	—
Secretary and Registrar	Henry Carey, Esq.	45	October - 1849	700 - -	Trinity, 1834	—
Taxing Officer	Richard A. Fitzgerald, Esq.	41	October - 1849	700 - -		Hilary, 1838
General Clerk	John Lyons, Esq.	47	May - 1855	450 - -	Michaelmas, 1833	—
Accountant	Thomson Seed, Esq.	58	April - 1850	600 - -	—	
Notice Clerk	Robert K. Piers, Esq.	34	October - 1849	400 - -		Easter, 1843
Keeper of Deeds	Thomas Welsh, Esq.	58	April - 1850	400 - -	Michaelmas, 1829	—
Auction Clerk	John Locke, Esq.	48	December - 1852	300 - -	—	
Examiner to the First Commissioner	Richard Rothwell, Esq.	55	December - 1850	400 - -	—	
Examiner to the Second Commissioner	James M'Donnell, Esq.	29	April - 1850	400 - -	Michaelmas, 1850	—
Examiner to the Third Commissioner	Richard D. Urling, Esq.	27	April - 1850	400 - -	Easter, 1852	—
First Assistant to the Secretary and Registrar.	Thomas Kane, Esq.	23	March - 1855	300 - -	Michaelmas, 1854	—
Second Assistant to the Secretary and Registrar.	George P. Richards	39	November - 1849	250 - -	—	
Third Assistant to the Secretary and Registrar.	John H. Carey	50	January - 1856	100 - -	—	
Assistant to the Taxing Officer	John H. Staveley	38	May - 1855	250 - -		Trinity, 1838
First Assistant to the General Clerk	Thomas J. Richards	27	April - 1850	250 - -	—	
Second Assistant to the General Clerk	Robert C. Maunsell	24	May - 1855	150 - -	—	
Third Assistant to the General Clerk	Lawrence M. Doyle	22	November - 1853	150 - -	—	
First Assistant to the Accountant	William J. Gillespie	47	October - 1852	250 - -	—	
Second Assistant to the Accountant	Christopher Gillespie	37	October - 1855	180 - -	—	
Third Assistant to the Accountant	Alfred Mongan	27	November - 1855	100 - -	—	
Assistant to the Notice Clerk	Richard F. Frizell	39	April - 1850	250 - -	—	
Assistant to the Keeper of Deeds	William J. Gumley	21	July - 1850	150 - -	—	
Second Assistant to the Keeper of Deeds.	Edward G. Smith	30	November - 1853	100 - -	—	
Assistant to the Auction Clerk	Andrew E. Carleton	32	February - 1851	120 - -	—	
Assistant to the First Commissioner's Examiner.	Thomas N. Moore	26	January - 1853	150 - -	—	
Assistant to the Second Commissioner's Examiner.	Richard H. V. Archer	23	April - 1851	150 - -	—	
Assistant to the Third Commissioner's Examiner.	Henry Fawcett	21	January - 1853	150 - -	—	
Crier	James Woulfe	29	October - 1849	100 - -	—	

Incumbered Estates Commission, 13 February 1856.

Henry Carey, Secretary and Registrar.

RETURN from the MASTERS, EXAMINERS, CLERKS, and ASSISTANT CLERKS, in the COURT of CHANCERY in *Ireland*.

RETURN from the Office of *William Henn*, Esq., Master in Chancery.

William Henn, Esquire, aged 71 years, appointed 17th June 1820; Salary 3,000 *l.* late currency.

		£. s. d.
Equivalent in British to		2,769 4 7½
Emoluments, three several Annual Sums of	£. 92 6 2	
	276 18 5	
	and 184 12 4	
		553 16 11
TOTAL - - - £.		3,323 1 6½

John J. Stanford, Chief Clerk and Examiner, aged 45 years, appointed under the 13th & 14th Vict., c. 89, by deed, dated 13th September 1851, holds office during good behaviour; Annual Salary 600 *l.*, out of which 30 *l.* per annum is deducted for a Superannuation Fund. Admitted an Attorney-at-Law Michaelmas Term, 1837, and a Solicitor of the Court of Chancery 19th January 1847.

Observation.—No Copy of Patent furnished as required, because the Examiner holds pursuant to 13 & 14 Vict. c. 89, s. 35.

Richard King, Assistant Clerk, age 56 years, Salary 200 *l.*; appointed 3d January 1816, holds office during good behaviour.

John King, permanent Clerk, appointed in 1848, age 23 years, annual emoluments varying from 110 *l.* to 130 *l.*

16 February 1856. *Will. Henn.*

RETURN from the Office of *Edward Litton*, Esq., Master in Chancery.

Name of Officer.	Age.	Date of Appointment.	Salary.	Other Emoluments.	When called to the Bar.	Tenure of Office.
Edward Litton, Esq., Master in Chancery.	68	2 Nov. 1842 -	£.3,000 Irish, being £. 2,769 4. 8. of present Currency.	£. s. d. None -	1 May 1811	By Patent.
John L. Litton, Examiner	25	June 1852 - - Deduct for Superannuation Fund	£. s. d. 600 - - 30 - -	None -	- - -	- - No Copy Patent furnished as required, because Examiner holds pursuant to 14 & 15 Vict. c. 89, s. 35, for life, during good behaviour.
		Net Income - £.	570 - -			
William A. Forde, Assistant Clerk.	35	January 1836 -	200 - -	50 - -	- - -	- - Pursuant to 14 & 15 Vict. c. 89, s. 35, for life, during good behaviour.
John H. Walsh, Clerk -	46	December 1830 -	160 1 5	30 - -	- - -	- - Pursuant to the Warrant of the Lords of the Treasury, dated 25 June 1852.

18 February 1856. *Edward Litton.*

RETURN from the Office of *William Brooke*, Esq., Master in Chancery.

NAME.	Office.	Age of Officer.	Date of Appointment.	Amount of Salary.	Other Emoluments	Date when called to the Bar.	Date when enrolled Attorney.	Observation.
William Brooke -	Master in Chancery.	59 years -	19 May 1846	£. s. d. 3,000 - - late Irish currency.	£. s. d. - -	6 June 1817	- - -	- - No Copy Patent furnished as required, because the Examiner and Clerk hold not by patent, but pursuant to the Act 13 & 14 Vict., c. 89, s. 35, for life, during good behaviour.
W. Peters Smith -	Examiner to said Master.	41 years -	13 May 1847	600 - - British.	- -	- - -	Trinity Term, 1837.	
Campbell Moore -	Assistant Clerk to said Master.	52 years -	17 May 1849	200 - -	—	—	—	
Thomas Nicolls -	Scrivenery Clerks	26 years -	10 Aug. 1850	*40 - -	90 - -	—	—	
Michael M'Conn -		24 years -	26 Oct. 1846	40 - -	50 - -	—	—	

* Paid to Mr. Nicolls by Master Brooke, out of his private funds, but for official services.

16 February 1846. *William Brooke.*

RETURN from the Office of *Jeremiah J. Murphy*, Esq., Master in Chancery.

NAMES.	Office.	Age of Officer.	Date of Appointment.	Amount of Salary.	Other Emoluments.	Date when called to the Bar.	Date when enrolled Attorney.	Observations.
				£. s. d.				
Jeremiah J. Murphy	Master in Chancery.	52 years -	8 Aug. 1846	3,000 - - late Irish currency.	No other fees or emoluments.	Hilary, 1828	- - -	- - The Examiner and Clerk hold not by patent, but pursuant to the Act 13 & 14 Vict. c. 89, s. 35, for life, during good behaviour.
William D. Murphy	Examiner to said Master.	33 years -	30 May 1848	600 - - per year, British.	No other fees or emoluments.	- -	June 1844 -	
William O'Callaghan	Assistant Clerk to said Master.	58 years -	Dec. 1833 -	200 - - per year.	No other fees or emoluments.	—	—	
Edward Baker -	Writing Clerk -	35 years -	Oct. 1836 -	- - Emoluments fluctuating between 130 *l.* and 160 *l.* per year.		- -	- - -	- - Was for two years previous to his appointment as writing clerk, engaged in one of the Six Clerks' offices, but got no compensation, not having been three years in office previous to the abolition of said Six Clerks.

20 February 1856. *J. J. Murphy.*

RETURN from the Office of *Acheson Lyle*, Esq., Master in Chancery.

NAMES.	Office.	Age.	Date of Appointment.	Salary.	Date of being called to the Bar.
				£. s. d.	
Acheson Lyle, Esq. - - -	Master in Chancery -	60	- - Appointed by patent, 26 September 1843, Chief Remembrancer of the Court of Exchequer, and transferred to Chancery by the Act 13 & 14 Vict. c. 51.	2,500 - - a year.	Trinity, 1818
James A. Lyle, Esq. - - -	Examiner - -	29	- - 8 August 1850 - -	600 - -	Trinity, 1849
Luke Davis - - -	Assistant Clerk -	42	- - 8 August 1850 - -	200 - -	—

Note.—The Masters' Examiners do not hold their offices by patent, but pursuant to the provisions of 13 & 14 Vict. c. 89, for life, during good behaviour.

15 February 1856. *Acheson Lyle.*

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Extent to which any limit should be placed upon the right of an unincumbered proprietor to obtain a Parliamentary title, 4020-4026—— Consideration of the amount of business likely to devolve upon the Court of Chancery, as reconstructed, in connexion with the staff contemplated, 4024-4032. 4039-4044——If two Vice-Chancellors are not found to be sufficient, additional judicial strength must be procured, 4033. 4041. 4047——Recommended use, as far as possible, in the new scheme of the existing staff of the Incumbered Estates Court, 4036. 4052-4056.

Less business in the Incumbered Estates if the Court were permanent, 4044——Further reference to the arrears of the court, as showing that the Masters in Chancery may advantageouly be employed upon them, 4045-4051——The determination of the title should certainly mainly rest with the Vice-Chancellors, 4046, 4047. 4078-4081——There are not at present any buildings available for Vice-Chancellors' courts, but the benchers possess some ground at the Four Courts, and would erect buildings upon them if Government would take a long lease at a rental of five per cent., 4057-4064.

Defence, on general grounds, of the recommendation that fees and stamps upon all proceedings in the Court of Chancery, as remodelled, should be abolished or considerably reduced, 4065-4077——Further statement that the judges might at their option refer the abstracts of title to the consideration of experienced conveyancers, 4078, 4079——Importance, however, of the judge personally reading the abstracts in the great majority of cases, 4080, 4081.

Report, 1856—*continued.*

Brooke, Master. Practice of Master Brooke in regard to the investigation of the title in the case of sales in his office, *Murphy* 1897.

Return containing particulars as to the date of appointment, salary, &c. of Master Brooke, and of the several persons in his office, *App. p.* 356.

Browne (Minors) and Cheevers. Case of Cheevers and Browne, in which the estate was sold in the Incumbered Estates Court under an indemnity deed, whereas it was not in the indemnity deed at all, *Murphy* 2128–2131——On appeal to the Privy Council the decision of the Commissioners was overruled, *ib.* 2128–2131.

Building Accommodation (Court of Chancery). Assumption by witness in the Report of 1855, that there was proper provision in the offices of the Court of Chancery for the business recommended to be transferred, *Master of the Rolls* 605——Impracticability at present, through want of accommodation, of transferring the business of the Incumbered Estates Court to the Court of Chancery, *Master of the Rolls (Ireland)* 1095–1098. 1111, 1112; *Longfield* 1542; *Gibson* 2557, 2558; *King* 3064——Exceedingly defective building accommodation now attached to the Court of Chancery, *Master of the Rolls (Ireland)* 1097; *Murphy* 2045–2052; *King* 3064——There are not at present any buildings available for Vice-Chancellors' courts, but the benchers possess some ground at the Four Courts, and would erect buildings upon them if Government would take a long lease at a rental of five per cent., *Right Hon. A. Brewster* 4057–4064.

Building Accommodation (Incumbered Estates Court). Inadequate provision for the safe security of the deeds from fire, *Hargreave* 798–803.

C.

Carriage of Proceedings. Practice in regard to the conduct of sales in the Incumbered Estates Court by the solicitor for the petitioning incumbrancer; control exercised by the Court hereon, *Hargreave* 81–91——Power to transfer the carriage of proceedings from the person who originally instituted them, *Adair* 2748. 2750. 2757, 2758. 2766–2771. 2785——Suggested check upon the solicitor entrusted with the carriage of the proceedings and the sale, *ib.* 2868–2874. 2897. 2935–2937——The Commissioners should be empowered to give the carriage of the proceedings to the parties most interested, *ib.* 2897.——*See* also *Carter, Mr.*

Carter, Mr. Transfer of the proceedings in the case of Mr. Carter from the person who first instituted them; considerable delay before such transfer, *Adair* 2771–2774.

Chancery, Court of (England). Much less business in the Irish than in the English Court of Chancery, *Master of the Rolls* 575. 583——Business devolving on witness; hours for which he sits, *ib.* 576–580——The altered working of the court has been in operation since the year 1852, *Williams* 1162, 1163——Larger influx of suitors in consequence of the amended administration of justice in the court, *ib.* 1221–1223——A sale under the the court does not give an indefeasible title, *ib.* 1242, 1243. 1299–1301.

See also *Chief Clerks,* 4. *Masters (Court of Chancery),* 1. *Receivers,* 17. *Roster of Conveyancers.*

Chancery, Court of (Ireland). Difficulty in regard to notices, &c., which prevented the efficiency of the measure of 1848 for effecting the sale of incumbered estates through the Court of Chancery, *Master of the Rolls* 549——Consideration of the amount and character of the business now devolving on the court, and of the increase under the proposed Act, *ib.* 551–556. 575–591.

The Bill under consideration is somewhat analogous to the Act reforming the Court of Chancery in England, but it omits some of the most important provisions of that Act, *Master of the Rolls (Ireland)* 996–999.

Evidence in favour of investing the court with the fullest powers and facilities to sell incumbered estates, *Murphy* 1902 *et seq.* 2037–2043——Comparatively few sales through the court since the operation of the Incumbered Estates Act, *ib.* 1908–1911. 1942–1945——With a proper staff the court could readily carry out future sales of incumbered property, *ib.* 2040–2044——Summary of witness's recommendations, *ib.* 2100–2104.

Approval of vesting in the Court of Chancery the jurisdiction of giving a Parliamentary title, *Gibson* 2448–2451; *Right Hon. A. Brewster* 3545——The contemplated changes would amount almost to a reconstruction of the court, *Right Hon. A. Brewster* 3733, 3734——All great principles should be laid down by legislation, and all the details worked out by rules, *ib.* 3735——Statement to the effect that a remodelling of the Court of Chancery, in order to meet the transfer of the Incumbered Estates Court, rather than a reform of the court, was aimed at by the Commissioners who reported thereupon in 1855, *ib.* 3794–3808.——How far the question of a reconstruction of the court was referred to the Commissioners, or how far they were justified in considering it, *ib.* 3796–3800, 3961–3970.

Report, 1856—*continued.*

Chancery Court of (Ireland)—continued.

Return containing particulars as to the staff in the offices of the several Masters, *App. p.* 356, 357.

Resolution of the Committee, that it is essential that the constitution of the Court of Chancery in Ireland should be altered, and its procedure and practice reformed, *Rep. p.* iii.

See also *Accessibility of Judges. Accounts. Act* 13 *&* 14 *Vict. c.* 89. *Appeals. Arrears. Assimilation of the Law. Building Accommodation. Commission of Inquiry. Conveyancing. Co-ordinate Jurisdiction. Delay (Court of Chancery). Despatch of Business. Expense. Fees and Stamps. Incorporated Society of Attorneys and Solicitors (Ireland). Incumbered Estates Court,* 5, 6, 8. *Investigation of Title,* 2. 4. *Judicial Business. Judicial Staff. Masters. Parliamentary Title. Personalty. Prices. Procedure and Practice. Receivers. St. Leonards, Right Hon. Lord. Staff. Taxation of Costs. Title. Title Masters or Commissioners.*

Chancery Regulation Act. See *Act* 13 *&* 14 *Vict. c.* 89.

Chief Clerks:

1. *As to the Mode of Appointment.*
2. *Qualifications to be required.*
3. *Duties to be reposed in them.*
4. *Practice in the English Court of Chancery.*

1. *As to the Mode of Appointment:*

The appointment of the proposed chief clerks should rest with the judge, but the Lord Chancellor or Lord Lieutenant should have an effective veto, *Hargreave* 309, 310. 403–408. 854–867; *Master of the Rolls (Ireland)* 1043–1047. 1100——Objection to the appointment of the chief clerks or junior clerks being vested in the executive Government instead of in the judges themselves; the Lord Chancellor, however, might have a veto, as in England, *Master of the Rolls* 469–474. 625–646——Nature of the check upon incompetent chief clerks if the appointment rests with the judge; less difficulty as regards removal under this plan than if the appointment were made by the Executive, *ib.* 525–546——The power of removal should, as well as the appointment, rest with the judge, *Hargreave* 861–869.

Inexpediency of the chief clerks being appointed by the Government instead of by the judges, *Longfield* 1356–1358; *Malins* 4340——The judge should appoint his own chief clerk, there being a veto in the Lord Lieutenant, *Murphy* 1958–1963——Possibility of the veto being better exercised if vested in the Executive than in the Lord Chancellor, *ib.* 1959–1962——Doubt as to the use of a veto in the Lord Chancellor, *King* 3061.

2. *Qualifications to be required:*

A solicitor would be the fittest person for chief clerk, *Master of the Rolls* 475, 476 ——Desirableness of the office being filled by a person of considerable legal knowledge and skill, *ib.* 547, 548——There should not be any specified limitation in regard to the qualification, *Hargreave* 856.

Objection to the qualification that a barrister of six years' standing may be appointed, but that a solicitor must have served ten years in order to be qualified, *Master of the Rolls (Ireland)* 1048, 1049——An English conveyancing clerk would be a very suitable person for the office, *Longfield* 1759——The chief clerk should be selected from the practising bar in Ireland, *Murphy* 1964–1966. 2099.

3. *Duties to be reposed in them:*

The chief clerks could undertake many important functions now devolving on the Commissioners; these functions described, *Hargreave* 395–402. 409–426. 837–840—— *Longfield* 1355. 1406. 1702–1704. 1755–1769. 1779–1782——Extent to which they might assist the judge in regard to the examination of titles, *Hargreave* 414. 422–429. 763–771——The chief clerk might determine, on reading the petition for sale, who were the proper persons to be served with notice, *ib.* 415–520——Expediency of the judicial duties of the Vice-Chancellors being partly delegated to the chief clerks, *Master of the Rolls* 501–503——Approval of counsel not being heard before the chief clerks, *ib.* 602–604.

The public would most likely have been equally satisfied if, as regards the title, the opinion of chief clerks had been taken, *Hargreave* 776–781——Nature of the supervision and control which the judge should exercise over the functions and duties of the chief clerk, *ib.* 837–853——In administrative business the clerk might do everything but decide the points of law, *ib.* 840——In all matters of any difficulty the clerk should consult with the judge, *ib.* 842, 848——Propriety of the judge being responsible for the duties performed by his clerk, *ib.* 853.

Report, 1856—*continued.*

CHIEF CLERKS—continued.

3. *Duties to be reposed in them*—continued.

The clerk should not perform any judicial business, *Williams* 1224——The conveyances of the estates might be undertaken by a competent chief clerk; explanation hereon, *Longfield* 1755. 1763-1765——Suggestion that a table of duties of chief clerk be settled by the Lord Chancellor and Vice-Chancellor and hung up in each chief clerk's office, *Murphy* 1954-1957——Large administrative duties should devolve on the clerk, *ib.* 2105. 2106.

Examination in disapproval of the clause in the Government Bill with regard to the chief clerk certifying to the judge; such certificate would probably grow into the evil of a report, *King* 3151-3167——The duties of the chief clerk should be entirely administrative, *ib.* 3165-3167.

4. *Practice in the English Court of Chancery:*

The qualification in the English Court of Chancery is, that an attorney or solicitor must be appointed, *Master of the Rolls* 475, 476——By the appointment of chief clerks the transaction of business has been much improved, both as regards expedition and expense, *Williams* 1169-1179——Advantage in cases taken from the chief clerk to the judge being summarily disposed of in chambers, *ib.* 1173-1179——Insufficient opportunity, however, for communicating with the judge, whilst at the same time too much work is thrown upon the clerks, *ib.* 1179-1191——Instances of complaint that work has been improperly transferred by the chief clerks to the inferior clerks, on account of the former having too much to do, *ib.* 1189-1191——Explanation as to a demand having been made for additional chief clerks on the refusal of Parliament to appoint additional judges, *ib.* 1250-1255.

See also *Accessibility of Judges. Allocation Schedule. Auction. Incorporated Society of Attorneys and Solicitors.*

Claims. Obstacles to furnishing a return showing the claims upon the estates sold in the Incumbered Estates Court, and how far they have been satisfied by the proceeds of the sales, *Hargreave* 16-22——The Commissioners never take steps to ascertain the amount of claims not satisfied by the purchase-money, *ib.* 16, 17. 21, 22——Opportunities given to parties to establish claims before the actual sales are carried out, *ib.* 29, 30——Advantage in the absolute settlement of all rights in respect of the land sold, *ib.* 42, 43——Manner in which small creditors should put in their charge against real estates, *Murphy* 2090.

Clerks. See *Chief Clerks. Salaries. Staff.*

Commission of Inquiry. Witness served on the Royal Commission which reported in 1855 in favour of the extension and permanency of the system of the sale of estates giving a Parliamentary title, *Master of the Rolls* 432-434——Witness's view of the subject referred to the Committee is recorded in the Report of the Commissioners appointed to inquire into the Incumbered Estates Court, *Master of the Rolls* (*Ireland*) 995.

Witness was one of the Commissioners who concurred in the Report upon the Incumbered Estates Court, and the importance of continuing the principle of that Court, *Right Hon. A. Brewster* 3454. 3458-3466——Consideration of the value of the evidence upon which the Commissioners reported in favour of remodelling the Court of Chancery for the sale of unincumbered property, *ib.* 3461-3466. 3974-3986——Variety of knowledge and experience brought to bear upon the Report of the Commissioners, *ib.* 3673, 3674.

Commissioners (*Incumbered Estates Court*). Witness has been one of the Commissioners of the court since its establishment in 1849, *Hargreave* 2-5; *Longfield* 1333-1335——Before witness's appointment, he had practised at the bar nearly six years as a conveyancer, but not as an advocate, *Hargreave* 830-833——Mr. Hargreave and witness have had rather too much work thrown upon them, *Longfield* 1513, 1514.

Conviction that the functions devolving on Mr. Longfield and Mr. Hargreave have been well and ably discharged, *Master of the Rolls* 445——Communication between Lord John Russell and witness as to the original appointment of the Commissioners, *ib.* 462. 622-624——Circumstances under which Mr. Hargreave was appointed, *ib.* 462.

Ability and caution, generally speaking, with which the Commissioners have performed their duties, *Master of the Rolls* (*Ireland*) 1006, 1007. 1144——The Commissioners have ably discharged their functions, *Right Hon. A. Brewster* 3629-3633.

See also *Accessibility of Judges. Incumbered Estates Court. Investigation of Title*, 1. 3. *Judicial Staff*, 3. *Staff*, 4.

Compensation. Slight compensation to which witness would be entitled in the event of the abolition of his office, *King* 3125-3128. 3140-3143.—— *See* also *Pensions.*

Report, 1856—*continued.*

Compensation and Fee Fund. How this fund of the Court of Chancery was composed, and how distributed, *King* 3070-3079——The sources of the fund have been gradually falling off, and it is now quite bankrupt, *ib.* 3079.

Conditions of Sale. Care taken in the Court of Chancery that the conditions of sale are proper, and that they afford protection in the event of a blot in the title, *Murphy* 1892-1896.

Control. The whole system of Title Masters and other Masters, as well as the rules of the court, should be under the general control and regulation of the Lord Chancellor, *Gibson* 2389-2396.

Conveyancing. Large amount of conveyancing business likely to devolve on the court if entrusted with the sale of unincumbered estates, *Hargreave* 430; *Master of the Rolls* 528-530——Statement as to only one person in Ireland having been named to witness as fully competent for an Incumbered Estates Commissioner, *Master of the Rolls* 462. 622, 623——Considerable knowledge of conveyancing required in the sale of incumbered estates, *ib.* 581, 582.

Examination to the effect that judges entrusted with the sales of incumbered and unincumbered estates, giving Parliamentary titles, are not properly qualified, however acquainted with equity practice, unless they are thoroughly conversant with the practice of conveyancing, *Hargreave* 716 *et seq.* 787-792——Greater fitness, on the whole, of members of the English bar than of the Irish bar to conduct sales of incumbered or unincumbered estates, on account of their practising more as conveyancers, *ib.* 732-749. 783-795.

Strong exception taken to the statement of Sir J. Romilly as to the inability of the Irish bar to supply an efficient conveyancer as Commissioner, *Master of the Rolls (Ireland)* 1103——Number of conveyancers at the English bar; a large quantity of conveyancing is also done by solicitors, *Williams* 1234-1237. 1287-1290——Greater fitness of Chancery barristers than of conveyancers in Ireland for the office of Vice-Chancellor, *Longfield* 1705, 1706. 1707. 1711.

Difficulty, delay, and expense in making out titles and transferring land in Ireland, independently of the Incumbered Estates Court; instances thereof, *Right Hon. A. Brewster* 3471-3478. 3699-3706——There is not much transfer of landed property in Ireland, *ib.* 3511——Very considerable opportunities of Irish barristers for understanding conveyancing, *ib.* 3775.

See also *Investigation of Title.* *Roster of Conveyancers.*

Co-ordinate Jurisdiction. Inexpediency of continuing the Incumbered Estates Court, inasmuch as it would have to decide questions similar generally to those coming before the Court of Chancery when reformed, *Hargreave* 132-139. 146, 147; *Longfield* 1430. 1433——Probability, if the Incumbered Estates Court were made permanent, of its jurisdiction sometimes clashing with that of the Court of Chancery, *Hargreave* 946, 947. 953-955; *Longfield* 1680-1683——Means for preventing the inconvenience of a co-ordinate jurisdiction if the Incumbered Estates Court be continued, *Hargreave* 947. 955-965. 992.

No practical inconvenience arises from the continuance of courts having concurrent jurisdiction, *Master of the Rolls (Ireland)* 1129-1133——Doubt as to there being any additional expense in the case of an estate being at the same time in the Court of Chancery, as to personalty, and in the Incumbered Estates Court, as to realty, *Adair* 2865-2867——Question as to there being any abuse through an estate being operated upon simultaneously by the Incumbered Estates Court and by receivers under the Court of Chancery, *Right Hon. A. Brewster* 3685, 3686.

Copies of Leases. The Incumbered Estates Commissioners should be empowered to give certified copies of leases, &c., which might be used as legal evidence in courts of law, *Adair* 2897.

Cost of Establishment. The annual cost of the Incumbered Estates Court is about 14,000*l.* or 15,000*l.*, *Longfield* 1603.

Costs. See *Taxation of Costs.*

D.

Delay (Court of Chancery). Delays consequent upon the office of Master, *Master of the Rolls (Ireland)* 1050.

See also *Hamilton* v. *Hobhouse.* *Personalty.* *References and Reports.*

Delay (Incumbered Estates Court). Considerable delay in the transaction of business before the distribution of the money, *Gibson* 2197-2204——Serious delays adverted to as often attributable to the parties concerned, *ib.* 2443-2447——Greater delay at the present time than on the first establishment of the court, *Adair* 2722, 2723. 2810, 2811.

Report, 1856—*continued.*

Delay (*Incumbered Estates Court*)—continued.

Causes of the delay of owners or solicitors to proceed with their petitions; considerations as to the practice of the court hereon, and as to the propriety or otherwise of not compulsorily expediting the sale, *Adair* 2724. 2741 *et seq.*——The only provision advisable is, that the parties not proceeding on the petition should explain to the court their reasons for not doing so, and should be liable to have the petition dismissed, *ib.* 2754-2756——Frequent instances of considerable delay doubtless occur between the presentation of the petition and the sale, *ib.* 2775-2777——Evils consequent on the delays which have occurred before the distribution of the funds after the sale has taken place, *ib.* 2778-2787.

See also *Bingham Estates.* *Despatch of Business.*

Despatch of Business. Circumstance of sales in the Court of Chancery being completed in much less time than sales in the Incumbered Estates Court, *Hargreave* 215-218——In difficult cases in the latter court it takes from two to three years after a petition for sale is lodged to effect the sale, and dispose finally of the money, *ib.* 215, 216. 330——The Commissioners now transact the business of the court as fast as it comes in, without overtaking the so-called arrears, *ib.* 332-336. 349.

Correction of former evidence as to the period in which sales are on the average completed; Mr. Longfield states the average at about two years from the presentation of the petition, but witness puts it at from fifteen to eighteen months, *Hargreave* 690-695. 706——Average period of seventeen months for completing sales in Master Brooke's office compared with the period required in the Incumbered Estates Court; more important sales and different practice in the latter court, *ib.* 696-707——Illustration of the short time that would be necessary for completing the sales if there were no arrears before the court, *ib.* 708-715——Different periods now required after a petition comes in before the sale is effected; the average time is from two to three years, *Longfield* 1341. 1344.

Very forward state of the business of witness's court; there are no arrears, *Master of the Rolls* (*Ireland*) 1054——If there were no account of the personal estate to be taken in the case of sales in the Court of Chancery, the proceedings in an ordinary cause might be completed in about six months; *Murphy* 2132——Practice formerly in regard to adverse sales; immense periods for which some Chancery suits have lasted, *Right Hon. A. Brewster* 3497-3505.

See also *Act* 13 *&* 14 *Vict. c.* 89. *Arrears.* *Chief Clerks.* *Delay.* *References and Reports.*

Distribution of Funds. About 14,000,000 *l.* sterling have been paid out of the Incumbered Estates Court, *Hargreave* 8, 9; *Longfield* 1336——Means of the Commissioners for retrieving, in the distributing of the funds, any possible error made in regard to title, *Hargreave* 756-758——The payment of the funds into the Court of Chancery is very seldom directed by the Commissioners, *ib.* 980——System of record in the Incumbered Estates Court in regard to the money orders of the Commissioners, *ib.* 982-988.

Similar duties to be performed by the proposed Vice-Chancellors as are now performed by the Commissioners with reference to the proceeds of sales, *Longfield* 1403-1406——The produce of sales are distributed in about four months after the sales, *ib.* 1833, 1834.

A large portion of the funds is often distributed before the final adjudication of the schedule, *Gibson* 2202, 2203——The Masters should be empowered to conduct the distribution of the funds, *ib.* 2225. 2357——Before money is allocated to any creditor he should swear an affidavit that such money is due, *Adair* 2726, 2727. 2897——Out of about 18,000,000 *l.* sold in the Incumbered Estates Court, 14,000,000 *l.* or 15,000,000 *l.* have been distributed, *ib.* 2801.

See also *Claims.*

District Receivers. Power to consolidate receivers over certain districts, *King* 2666, 2667. 3183, 3184; *Lyle* 3231, 3232——Improvement consequent on the appointment of district receivers, *King* 2666, 2667——Obstacle, as regards district receivers, in the system of recognizances, *Lyle* 4263.

E.

Encumbered Estates Court. See *Incumbered Estates Court.*

Equity Practice. Desirableness of a knowledge of equity practice in the proposed Vice-Chancellors, *Hargreave* 762. 787-789.

Examination of Witnesses. With regard to that portion of the Bill which relates to practice and procedure, the provisions in regard to the examination of witnesses are exceedingly deficient, and are not in conformity with the recommendations of the Commissioners' Report in 1855, *Master of the Rolls* (*Ireland*) 999-1002——Suggested introduction from the English Act of those clauses which precede the oral examination of witnesses, and lead to an issue being joined between the parties, *ib.* 999.

Reports, 1856—*continued.*

Examination of Witnesses—continued.

Circumstance of the *vivâ voce* examination in the English court taking place almost invariably before the examiner, and not in the presence of the judge who hears the cause, *Williams* 1192. 1197–1201——The present mode of *vivâ voce* examination before the examiners is a great improvement upon the former mode, *ib.* 1202–1204——Importance, however, of all *vivâ voce* evidence being given before the judge, *ib.* 1204–1208. 1257–1266.

Opinion of the Committee that the practice of receiving evidence *vivâ voce* in the Court of Chancery before the judge who has to decide the cause is a sound one, and that it is desirable that increased facilities should be afforded for a more extensive application of the system, *Rep. p.* iii.

Examiners. Constant supervision at present over the examiners in the Incumbered Estates Court, *Hargreave* 845——Each Commissioner has an examiner, or chief clerk, appointed by himself, *Longfield* 1349.

Objection to raising the Masters' examiners into chief clerks, *Longfield* 1612–1614; *Murphy* 2096–2099——Return showing the duties performed by the examiner in witness's office, *Murphy* 1915——The examiners would make excellent second clerks, *ib.* 2098——Fitness of a solicitor as Master's examiner, *King* 3046, 3047——Important duties devolving on the Master's examiner, *ib.* 3029. 3046.

As regards the relationship between several of the examiners and the Masters, it may be observed that it is the common practice of judges, as well as of Masters in Chancery, to give appointments to their relatives, *King* 3060. 3062, 3063. 3124.

See also *Litton, Mr.* *Stanford, Mr.*

Exchequer Court (Ireland). Transfer in 1850 to the taxing department of the Court of Chancery of the costs incident to suits in the Court of Exchequer, *King* 3202, 3203——Reference to the abolition of offices in the Court of Exchequer, and to the compensation of the holders out of the Suitors' Fee Fund, *Lyle* 4242–4250——Obstruction in the taxing department of the Court of Chancery through the transfer of the taxation arrears of the Court of Exchequer, *ib.* 4251–4255.

Expense. Necessary expense in advertising, &c. attending the system of a Parliamentary title through means of the Incumbered Estates Court, *Longfield* 1545–1547. 1686–1688——Less expense of a sale in the court than in the Masters' offices, *ib.* 1691, 1692. 1809——Diminished expense of sales in the Court of Chancery if certain of Mr. Whiteside's suggestions be adopted, *ib.* 1693–1701——Slightly diminished expense in conveying unincumbered estates as compared with incumbered estates, *ib.* 1770–1773.

Opinion that the cost of selling an estate, small or large, in the incumbered Estates Court, is not unreasonable, *Adair* 2917–2920——How far the expense attendant upon a judicial investigation of the title is likely to deter unincumbered proprietors from coming before the Court, *Right Hon. A. Brewster* 3506–3510——The increased good of the Court of Chancery, as remodelled, is not likely to be attended with increased expense or delay, *ib.* 3786, 3787——The cost of passing the receiver's account is only one item of the costs affecting the estate, it being independent of the costs of any solicitors who may act upon the part of any persons interested in the passing of the account, *Lyle* 4149, 4150, 4156–4162.

See also *Fees and Stamps.* *Per-centage on Sales.* *Receivers*, 8. *Stamp Duty.*

F.

Fees and Stamps:

1. *Present Practice respectively in the Court of Chancery and the Incumbered Estates Court.*
2. *Amendment desirable in the Court of Chancery, as remodelled.*

1. *Present Practice respectively in the Court of Chancery and the Incumbered Estates Court:*

Sales are made in the Incumbered Estates Court without fees, to which indeed none of the proceedings of the court are subject, *Hargreave* 148, 149——Certain fees and stamps are exacted in the Court of Chancery which are prohibited in the Incumbered Estates Court; these are sometimes very heavy, *Hargreave* 896–900. 923, 924; *Longfield* 1561–1563. 1692; *Murphy* 1978–1986.

Heavy fees in the Court of Chancery upon drafts for the payment of money to creditors, *Gibson* 2245–2256——Small fee required for an account of the various sums paid to creditors, *ib.* 2257——Great advantage from the absence of fees and stamps in the Incumbered Estates Court, *ib.* 2308, 2309——The exemption from fees is one cause of the success of the court, *Adair* 2820.

Inexpediency of the Incumbered Estates Court being exempt from fees whilst the Court of Chancery is subject thereto, *King* 3094–3097.

Report, 1856—*continued.*

Fees and Stamps—continued.

2. *Amendment desirable in the Court of Chancery, as remodelled:*

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There are no means of ascertaining what amount of the property sold has been incumbered upon the purchase, 821-824——All the officers of the court are appointed by the Commissioners, 825, 826——The officers act generally cordially together, 827-829——Before witness's appointment he had practised at the bar nearly six years as a conveyancer, but not as an advocate, 830-833——Mr. Flanagan, the Master, who was not directly appointed by the Commissioners, is an excellent officer, 834-836.

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Constant supervision at present over the examiners by the Commissioners, 845——Independent action generally of the Master, 845——Propriety of the judge being responsible for the duties performed by his clerk, 853——The appointment of the chief clerk should rest with the judge, but the Lord Chancellor or Lord Lieutenant should have an effective veto, 854-867——There should not be any specified limitation in regard to the qualification, 856——The power of removing the chief clerk should, as well as the appointment, rest with the judge, 861-869.

Slight difference in regard to the examination of the title in selling an incumbered estate and an unincumbered estate, 870-872——Instances of occupying tenants neglecting to bring forward their interests, so that the estate has been sold discharged of their leases, 873-875——In witness's recommendations relative to the transfer of the business, he has always assumed the permanence of the appointments so transferred, 877, 878——There should be three Commissioners or Judges, with a considerably increased staff, who should perform their duties much as they do now, 879-885. 934-940.

Grounds for objecting to the continued separate action of the two courts, 886, 887. 941 *et seq.*——Difficulties anticipated if it be attempted to make the Incumbered Estates Court permanent, 886. 941-969——The judicial business is under any circumstances the most difficult and the most responsible which falls on the judge, 887-889——Improbability of the judge neglecting the judicial business, and transferring it, as being the most difficult, to the chief clerk, 890-894.

The stamp duty is the same in the Court of Chancery and the Incumbered Estates Court, 895-897——Certain fees are exacted in the former court which are prohibited in the latter; these are sometimes very heavy, 896-900. 923, 924——Examination upon and approval of the recommendation "that stamps and fees upon all proceedings in Chancery should be abolished, or reduced so much as not to interfere with the despatch of business or the publicity of the proceedings," 901-924——With regard to raising a fund in lieu of that now provided out of the suitors' fees, it is explained that a system of per-centage is to be substituted for the system of fees; approval thereof, 904-918. 925-933.

Probability, if the Incumbered Estates Court were made permanent, of its jurisdiction sometimes clashing with that of the Court of Chancery, 946, 947. 953-955——Means for preventing the inconvenience of a co-ordinate jurisdiction if the Incumbered Estates Court be continued, 947. 955-965. 992——With regard to receivers, it might be desirable to appoint them pending the sale, but it is very undesirable to give the Incumbered Estates Court a general power of appointment, 947. 992, 993.

Less responsibility and labour to be thrown upon the Incumbered Estates Court if some system were adopted of granting probate to real estate, 948-950——Simplification in the sale of estates if there were a general plan of registration of titles, 951, 952——On the whole, witness considers that the business would be better transacted if there

Report, 1856—*continued.*

Hargreave, Charles James. (Analysis of his Evidence)—*continued.*

were but one court to deal with it, 962-969——Importance, if the business be transferred, of applying a remedy to the arrear in the taxing department of the Court of Chancery; an additional taxing officer should be appointed; 970-975.

In the administration of real property in the Incumbered Estates Court, it rarely or never occurs that questions arising upon the title are referred by the Commissioners to a court of law, 976-979——The payment of the funds into the Court of Chancery is very seldom directed by the Commissioners, 980——System of record in the Incumbered Estates Court in regard to the money orders of the Commissioners, 982-988——The Government Bill deals too summarily with the question of Parliamentary title, more particularly in the case of sales of limited and partial interests in land; suggestions hereon; 989-991.

Henn, Master. Large amount of business transacted in Master Henn's office; details hereon; *King* 2606-2626——Number of days, and hours per day, of sitting throughout the year, *ib.* 2606-2608——Master Henn frequently takes papers home after the usual hours of sitting, *ib.* 2608——In 1855 there were 1,492 attendances in what is termed short causes, and 468 attendances in long causes, *ib.* 2609-2614——Taxation of costs formerly in Master Henn's office without there being inconvenient arrear, *ib.* 3110-3116. 3121.

Number of receivers' accounts lodged and passed in Master Henn's office in each of the years 1853-55, *Lyle* 3247. 3249, 3250.

Reference to Master Henn as well entitled, after his long service, to retire, *Right Hon. A. Brewster* 3789.

Henn, Master (*Official Establishment*). Return containing particulars as to the date of appointment, salary, &c. of Master Henn, and of the several persons in his office, *App. p.* 356.

I.

Income Tax (*Incumbered Estates*). Frequency of parties interested in sales injuring themselves by erroneous computations of income tax, *Longfield* 1355. 1471.

Incorporated Society of Attorneys and Solicitors (*Ireland*). Opinion of some members of the Incorporated Society that the Incumbered Estates Court should be continued as at present; the majority of the society are, however, in favour of the transfer of the court to the Court of Chancery after the arrears are wound up, *Gibson* 2205-2209. 2235——Unanimous feeling of the society that the arrears of the court should not be transferred; there should be a third Commissioner to deal with them, *ib.* 2210.

Opinion of the society that the Court of Chancery, as reconstituted, should have power to deal with unincumbered as well as incumbered estates, *Gibson* 2212-2215. 2235-2307——Objection by the council of the society to the system of Vice-Chancellors and chief clerks, through fear of too much authority being delegated to the latter, *ib.* 2225. 2233-2336. 2364——Feeling of the council of the society that the present system of Masters should be continued, with an extended jurisdiction, *ib.* 2225-2236. 2356, 2357——General disapproval by the council of the Bill projected by Government, *ib.* 2304-2306.

Incumbered Estates Court:

1. *Large Amount of Property sold through the Court.*
2. *Practice as to the Amount of Incumbrance upon which Sales are allowed.*
3. *Satisfactory working, generally, of the Court.*
4. *How far Injustice, individually, may have been done.*
5. *Recommended Transfer of the Court and its Jurisdiction to the Court of Chancery.*
6. *Objection to the proposed Transfer, or to the Permanence of the Court.*
7. *Particulars as to the present Staff.*
8. *Recommendation of the Commiteee that the Court be continued for another Year.*

1. *Large Amount of Property sold through the Court:*

The total amount of purchase-money for property sold is about sixteen and three-quarters or seventeen millions, *Hargreave* 6, 7——About fourteen millions have been paid out of court or accredited to purchasers, *ib.* 8, 9——Sale of about eighteen millions of property, and distribution of fourteen or fifteen millions, *Longfield* 1336; *Adair* 2801——Belief that the great mass of unsettled property in Ireland requiring to be sold has already been sold, or is in process of sale, *Right Hon. A. Brewster* 3494. 3711-3713.

2. *Practice*

Report, 1856—*continued.*

INCUMBERED ESTATES COURT—continued.

2. *Practice as to the Amount of Incumbrance upon which Sales are allowed:*

Before the Commissioners can sell contrary to the will of the owner, they require proof that the estate is incumbered to one-half of its value; how this investigation is made, *Hargreave* 117-120——Recommended removal of the restriction which prevents the incumbrancer from forcing a sale unless the property be incumbered to half its value, *ib.* 127, 128——There are no means of ascertaining what amount of the property sold has been incumbered upon the purchase, *ib.* 821-824.

Exceptions made to the rule of the court that estates must be incumbered to the extent of one-half their value; the Commissioners do not inquire into this point, *Adair* 2877-2881——The Incumbered Estates Court, as well as the Court of Chancery, would probably sell the whole of the estates of an incumbered proprietor, though his debts might not amount to one-fourth of the purchase-money, *Murphy* 2184-2187.

3. *Satisfactory working, generally, of the Court:*

Greater advantage in selling estates under the Incumbered Estates Court than under the Court of Chancery, *Hargreave* 97-99——Very satisfactory operation of the Act of 1849, *Master of the Rolls* 443, 444——Great satisfaction felt at present with the operation of the court, in which land to the value of about 18,000,000*l.* has been sold, *Murphy* 2070-2072. 2107, 2108.

Satisfactory working, generally, of the court; causes of its success, *Adair* 2819-2824——Great preponderance of good over evil in the operation of the court, *Right Hon. A. Brewster* 3480-3486——Both socially and nationally the court has doubtless effected much good, *ib.* 3775. 3782.

4. *How far Injustice, individually, may have been done:*

Witness does not concur in the statement that the Commissioners have actually sold the estate of one man to pay the debts of another, but mentions some instances in which claims were established after sale, *Hargreave* 31-39.

Instances of the insecurity of property as dealt with by the court; many cases of injustice will probably yet come to light, *Master of the Rolls* (*Ireland*) 1143, 1144. 1147, 1148. 1153——The care exercised by the Commissioners has resulted in a very small proportion of property being wrongfully sold, *ib.* 1144——Insecurity in being called upon to expose one's title under the operation of the court, *ib.* 1144——Statement showing that witness has personal reason for complaining against the court, *ib.*

Very trifling errors committed in the sales of estates; computation that the 50th part of a penny on the amount of purchase-money generally would rectify every mistake or instance of injustice in the dealings of the Commissioners, *Longfield* 1454. 1456-1459. 1465. 1469——Possibility of mistake in regard to the identity of the land sold, *ib.* 1811-1817——Additional checks have been imposed whenever they have been found wanting, *ib.* 1814. 1818——The Court of Chancery makes as many mistakes, in proportion to its work, as the Incumbered Estates Court, *ib.* 1819, 1820——Security in the sale of estates, that the change of possession is notorious, *ib.* 1823-1830. 1864-1866——Possibility of injustice under the jurisdiction of the Commissioners in the event of the sale of an estate by a ward, just come of age, to his guardian, *ib.* 1858-1860.

Time alone can show to what extent injustice has been done to remainder-men and contingent interests by the operation of the court, *Right Hon. A. Brewster* 3693-3695——Great hardship has doubtless been inflicted on individuals, *ib.* 3782.

5. *Recommended Transfer of the Court and its Jurisdiction to the Court of Chancery:*

As regards the permanence of the court, or the entire transfer of the business and the jurisdiction to the Court of Chancery, witness considers that such transfer is the most desirable plan that can be adopted, *Hargreave* 57-60. 131-157. 198 *et seq.*; *Master of the Rolls* 439. 449; *Murphy* 1946-1949——The Bill should continue and perpetuate the provisions of the Incumbered Estates Act, *Master of the Rolls* 651, 652——Grounds for objecting to the continued separate action of the two courts, *Hargreave* 867. 877. 914 *et seq.*; *Longfield* 1428-1434.

Difficulties anticipated if it be attempted to make the Incumbered Estates Court permanent, *Hargreave* 886. 941-969——Objection to another extension of the Court; the last Extension Act was not a good one, *Longfield* 1516-1518——Argument that the continuance of the Incumbered Estates Court is not desired in Ireland, and is not expedient, notwithstanding that the court has done immense good, and that its principle is fully approved, *Right Hon. A. Brewster* 3328-3350——Less business in the sale of incumbered estates if the court were permanent, *ib.* 4044.

6. *Objection to the proposed Transfer, or to the Permanence of the Court:*

Argument that the exceptional circumstances of Ireland, for which the Act has been found salutary, having passed away, it is unwise to continue the measure in a permanent form, *Master of the Rolls* (*Ireland*) 1008-1013. 1135, 1136.

Report, 1856—*continued.*

Incumbered Estates Court—continued.

6. *Objection to the proposed Transfer, &c.*—continued.

Grounds for objecting to the transfer of the powers of the Incumbered Estates Court to the Court of Chancery, supposing it to be decided that the jurisdiction of the former Court is to be permanent, *Master of the Rolls* (*Ireland*) 1027. 1114 *et seq.*

Inexpediency of legislating upon the assumption that there will always be vigilant judges to carry out the law; the security is thus thrown, not on the law, but on the persons administering it, *Master of the Rolls* (*Ireland*) 1144–1153.

7. *Particulars as to the present Staff:*

Return showing the names, age, date of appointment, amount of salaries, and other emoluments, of all persons holding office in the Incumbered Estates Court, with the dates of such of them as have been called to the bar or enrolled as attorneys, *App.* iii, *p.* 355.

8. *Recommendation of the Committee that the Court be continued for another Year:*

The Committee being of opinion that the system of conferring an indefeasible title on judicial sales of incumbered estates should be continued without intermission, recommend that the Incumbered Estates Court should be continued for a period not exceeding one year, *Rep. p.* iv.

See also *Accessibility of Judges. Advertisements, &c. Appeals. Arrears* (*Incumbered Estates Court*). *Assimilation of the Law. Bar, The. Blayney Estates. Building Accommodation. Carriage of Proceedings. Commission of Inquiry. Commissioners. Co-ordinate Jurisdiction. Delay* (*Incumbered Estates Court*). *Despatch of Business. Distribution of Funds. Expense. Fees and Stamps. Fictitious Incumbrances. Forced Sales. Four Courts. Incorporated Society of Attorneys and Solicitors* (*Ireland*). *Investigation of Title*, 1. 3. *Jobbing. Judicial Staff. Leasehold Interests. Non-litigatory Business. Parliamentary Title. Permanent Appointments. Personalty. Prices. Procedure and Practice. Public Opinion. Receivers. Richards, Baron. Solvent Proprietors. Staff*, 2. 3. 4. *Taxation of Costs. Tenants. Title. Unincumbered Estates.*

Indefeasible Title. See *Parliamentary Title.*

Indemnity Fund. Evidence to the effect that in the event of a system of Parliamentary title being permanently adopted, there should be an indemnity fund provided to meet the case of those whose rights might be defeated by a judicial mistake in the sale of the estates, *Williams* 1301–1314.

Illustration of the present means of the Incumbered Estates Court for preventing injustice if mistakes are discovered before the distribution of the funds, *Longfield* 1458——Inexpediency of an indemnity fund to meet possible cases of injustice, *ib.* 1464–1468.

Injustice or Insecurity (*Incumbered Estates Court*). See *Blayney Estates. Incumbered Estates Court*, 3. 4. *Indemnity Fund. Kane's Case. Leasehold Interests. Lundyfoot, Mr. Minors. Nolan's Minors. Notice of Sale. Tenants.*

Investigation of Title:

1. *As now carried out by the Incumbered Estates Commissioners.*
2. *As carried out by the Masters in the Court of Chancery.*
3. *Laboriousness and Importance of the Duty.*
4. *Adequacy, or otherwise, of Two Vice-Chancellors to perform it.*

1. *As now carried out by the Incumbered Estates Commissioners:*

Practice in regard to the investigation of titles by the Commissioners; it is more searching than the investigation by the Masters; *Hargreave* 26, 27. 180–189. 754, 755. 772. 776, 777——Investigation of the title by the Commissioners personally, save that the comparison of the deeds with the abstract is delegated to their examiners, *Hargreave* 26, 27. 180–189; *Longfield* 1345–1348——Labour imposed on the Commissioners in order to grant a Parliamentary title, *Hargreave* 180, 181. 189——In the administration of real property it rarely or never occurs that questions arising upon the title are referred by the Commissioners to a court of law, *ib.* 976–979.

The Commissioners constantly require counsel's opinion as to the title, *Longfield* 1476, 1477; *Gibson* 2533, 2534, 2564–2571——The selection of counsel to advise on the title rests with the solicitor, and not with the Commissioners, *Longfield* 1483. 1488, 1489——Improvement if the Commissioners selected the counsel, *ib.* 1486. 1489, 1490——Evils consequent on the judge undertaking the investigation of the title, *Murphy* 2062–2066. 2069——Opinion of counsel now practically taken by the Commissioners, *ib.* 2095.

Report, 1856—*continued.*

INVESTIGATION OF TITLE—continued.

1. *As now carried out by the Incumbered Estates Commissioners*—continued.

The solicitor in the case can, at the expense of the estate, refer the title to any counsel he pleases, *Gibson* 2535–2538. 2573——Difficulty in stating the time occupied by the Commissioners in the investigation, *Adair* 2802–2811——The submission of title to counsel is not compulsory on the solicitors, *ib.* 2948——Procedure in regard to the investigation adverted to in connexion with the time taken in the matter, *Right Hon. A. Brewster* 3699–3706.

2. *As carried out by the Masters in the Court of Chancery:*

Impression that the Masters in Chancery do not read the abstracts of title in detail, but are mainly guided by the certificate of counsel, with whom the investigation really rests, *Hargreave* 728, 729. 753, 754. 759–761. 773–775. 782——Accuracy of the reports of the Masters, both of the title and of the rights of the parties to the produce of estates, as subsequently sold in the Incumbered Estates Court, *Longfield* 1659–1664——Belief as to the competency of the Masters to decide upon abstracts of title, *ib.* 1737–1744.

Careful manner in which witness investigates the titles of land sold in his office, *Murphy* 1892–1894. 1897. 1913. 2066.

Greater fitness of Vice-Chancellors, as proposed, than of the existing Masters, as such, to perform the duty of investigating the title, it being of the utmost importance to impose such duty upon judges of the highest station and prestige that can be found, *Right Hon. A. Brewster* 3599–3607. 3617——Practice of the other Masters in regard to the investigation, *ib.* 1897, 1898——Considerable experience of the Masters in regard to the investigation of titles, *King* 3014–3016. 3022——Limited experience of the Masters on the subject, *Right Hon. A. Brewster* 3623–3625.

3. *Laboriousness and Importance of the Duty:*

Peculiar laboriousness of the investigation of titles, *Hargreave* 180, 181. 189. 766——Duty of the judge still to examine the abstract of title, even though there were competent counsel employed to give evidence thereon, *ib.* 747. 750, 751——Slight difference in regard to the examination of the title in selling an incumbered and an unincumbered estate, *ib.* 870–872——Advantage of fuller evidence in regard to the title, *Longfield* 1800, 1801.

Mr. Hargreave in getting his examiner to compare the abstract of title with the documents, deputes one of his most important duties, *Master of the Rolls* (*Ireland*) 1115——Importance of an examination of the title by the Commissioner charged with the sale of the estate, *Gibson* 2270. 2351–2355——The judges exclusively should, if possible, read the abstracts and investigate every title, personally, *ib.* 3601. 4080, 4081.

Less difficulty at present than is generally supposed in making out titles, *Malins* 4346. 4352——Absence of injustice in England, in the making out of the title resting upon the parties interested, *ib.* 4367, 4368.

4. *Adequacy, or otherwise, of Two Vice-Chancellors to perform it:*

If witness, in addition to his present duties, had to read abstracts of title conferring a Parliamentary title, he could not do it with satisfaction to himself, or with safety to the public, *Master of the Rolls* (*Ireland*) 1063, 1064. 1116——Necessity of two judges to read the abstracts of title, *Longfield* 1703. 1708. 1710–1712.

The judges of the remodelled court might, at their option, require the advice of counsel on difficult questions of title, *Right Hon. A. Brewster* 3625–3627. 4078, 4079——Preference given to eminent equity lawyers, or judges, over conveyancers as investigators of title, *ib.* 3634–3636. 3714–3716——Reference to the amount of work to be performed by the Vice-Chancellors, to the effect that they would probably read all the abstracts of title during the vacation; propriety thereof, *ib.* 3643–3650. 3717–3723——The determination of the title should certainly mainly rest with the Vice-Chancellors, *ib.* 4046, 4047. 4078–4081.

With regard to the proposition that the Vice-Chancellors of the court, as remodelled, should read the abstracts of title in the evening, or during the vacation, witness looks upon the same as altogether impracticable, and designates the proposition as contemptible and ridiculous, *Malins* 4369–4376.

See also *Conveyancing. Judicial Staff. Rolls, Master of the* (*Ireland*). *Roster of Conveyancers. Title Masters or Commissioners.*

J.

Jobbing. System of jobbing practised in the Incumbered Estates Court, speculators buying land for which they cannot pay, with the view of selling it at a profit; insufficient check hereon as compared with the check in the Court of Chancery, *Right Hon. A. Brewster* 3525–3527.

Report, 1856—*continued.*

Judge's Orders. Custom of witness always to endorse his own orders on the notices for motion, *Hargreave* 810-813.

Judges. See *Judicial Staff.*

Judgments. Difference in the law of England and of Ireland in regard to judgment creditors, and the appointment through them of receivers, *Hargreave* 384-386——Great mischief of the practice under the 13 & 14 Vict. c. 29, by which mortgage suits are instituted by judgment creditors, and receivers obtained without reference to the amount of the demand of the judgment creditor, *Murphy* 2080–2092; *King* 2649–2656. 2965; *Lyle* 3358–3360. 3373 *et seq.* 3410-3423; *Right Hon. A. Brewster* 3676-3679——Considerable extent to which judgments have become securities for debts in Ireland, *Right Hon. A. Brewster* 3898-3903.

New practice in regard to enforcing judgments introduced by the English Act of 1 & 2 Vict. c. 110, and the Irish Act of 3 & 4 Vict. c. 105, *Right Hon. A. Brewster* 3903–3912——Removal of the system whereby judgments were a hovering lien over the whole of the estate, *ib.* 3915–3920. 3923, 3924——Further changes effected by recent legislation in the position of judgment creditors, *ib.* 3915-3926.

In some respects the prevention of the assignment of judgments has led to increased law costs, *Right Hon. A. Brewster* 3921——Partial approval of the law preventing judgments from being freely assigned, *ib.*——Expediency of the judgment creditor being provided with the shortest remedy, more especially with a speedy sale, for the recovery of his debt, *ib.* 3927-3931. 3944-3948——Decided objection to the creditor being put in temporary possession of the property in the event of a receiver not being appointed, *ib.* 3933-3948.

Nothing in law is so little understood in Ireland or requires so much revision as the law in regard to judgments, *Lyle* 4215.

Resolution of the Committee that the several Acts which regulate the rights of a judgment creditor in Ireland against the real estate of his debtor require to be reconsidered, *Rep. p.* iv.

See also *Receivers.*

Judicial Business. Means for transacting the judicial business of the Court of Chancery, as remodelled, when so much attention must be paid to the administrative business relative to the sale of incumbered estates, *Hargreave* 297-313——The judicial business is, under any circumstances, the most difficult and the most responsible that falls upon the judge, *ib.* 887-889——Improbability of the judge neglecting the judicial business, and transferring it, as being most difficult, to the chief clerk, *ib.* 890-894.

In all equity proceedings as much judicial business as possible should be thrown upon the judge, *Williams* 1224——Importance of one judge transacting the whole of each cause, *Gibson* 2225-2232. 2358-2364——Objection to the investigation of the title, and the distribution of the proceeds of sale being undertaken by different judges, *Right Hon. A. Brewster* 3596, 3597. 3617-3620. 3663-3666.

See also *Investigation of Title, Non-litigatory Business, Unincumbered Estates,* 3.

Judicial Staff:

1. *Approval of the Appointment at first of only Two Vice-Chancellors for the Court as reconstructed.*
2. *Insufficient Judges proposed by Government; Suggestions hereon.*
3. *Question as to the Appointment of Mr. Longfield and Mr. Hargreave.*
4. *As to the possibility of One Vice-Chancellor being in time sufficient.*
5. *Advantage generally of more Judges and fewer Clerks.*
6. *Suggestion that the Number be regulated by the Lord Chancellor.*

1. *Approval of the Appointment at first of only Two Vice-Chancellors for the Court as reconstructed:*

Opinion that the Master's offices being abolished, two Vice-Chancellors, with an adequate staff of clerks under them, would be sufficient to conduct the combined business of the Court of Chancery and the Incumbered Estates Court, *Hargreave* 153–155. 202 *et seq.*——Including the anticipated business from the sale of unincumbered estates, the work to be done might require three instead of two Vice-Chancellors, *ib.* 202. 257, 258. 276–284. 879–885. 934–940——Amount of business likely to devolve on the new court; propriety of appointing at first not more than two Vice-Chancellors, *ib.* 348–377. 879–885. 934–940——If two Vice-Chancellors are not found to be sufficient additional judicial strength must be procured, *Hargreave* 276–278; *Longfield* 1398. 1427; *Right Hon. A. Brewster* 4033. 4041. 4047——A Vice-Chancellor, with his chief clerk, would be more efficient than the four Masters put together, *Hargreave* 371.

Belief

Report, 1856—*continued.*

JUDICIAL STAFF—continued.

1. *Approval of the Appointment at first of only Two Vice-Chancellors, &c.*—cont[d].

Belief that two Vice-Chancellors, and a proper staff, would be adequate for the discharge of the business of the Court of Chancery and of the Incumbered Estates Court, including also the sale of unincumbered estates, *Longfield* 1350–1355. 1398 *et seq.* 1538–1541. 1709. 1714——Substantially, two Commissioners are at present doing the work of the Incumbered Estates Court, *ib.* 1355——Advantage of commencing the court, as reformed, with too weak rather than too strong a judicial force, *ib.* 1398–1400. 1434–1438.

A third Vice-Chancellor would be desirable in expediting the business, but was not recommended by the Commissioners on account of the expense, *Right Hon A. Brewster* 3610–3612. 3813, 3814——Consideration of the amount of business likely to devolve upon the Court of Chancery, as reconstructed, in connexion with the staff contemplated, *ib.* 4024–4032. 4039–4044.

2. *Insufficient Judges proposed by Government; Suggestions hereon:*

Strong impression that four judges, including the Lord Chancellor and Master of the Rolls, with clerks under them, could not perform the duties proposed to be transferred to them by the Bill, *Master of the Rolls* (*Ireland*) 1065, 1066. 1101——Considerable additional judicial staff required in England in the event of a Parliamentary title being given to all estates through the medium of the Court of Chancery, *Williams* 1275–1280. 1287–1290——Utter impossibility of one or two Vice-Chancellors, with so many chief clerks and under clerks, transacting all the business of the Court of Chancery, as well as all the business accruing and in arrear connected with the sale of incumbered and unincumbered estates in Ireland, *Murphy* 2053. 2156–2159.

There should be two Vice-Chancellors in addition to two Title Commissioners, *Murphy* 2061. 2100——Suggestions for the appointment of two Title Masters, in connexion with some of the present staff, *Gibson* 2205 *et seq.*; *Adair* 2711 *et seq.*——Objection to the contemplated appointment of Vice-Chancellors to conduct the business of the amalgamated courts, *Gibson* 2205 *et seq.*; *Adair* 2718 *et seq.*——The Lord Chancellor, Master of the Rolls, two ordinary Masters, and two Title Masters, would be adequate efficiently to discharge the business of the combined courts, as well as the arrears, *Adair* 2737–2740——With a proper staff, and with the assistance of the Master of the Rolls, three Masters, having an extended jurisdiction as Vice-Chancellors, would be able to discharge the business of the Court of Chancery and of the Incumbered Estates Court, excepting the arrears, *King* 2995. 3002–3005. 3007–3009.

3. *Question as to the Appointment of Mr. Longfield and Mr. Hargreave:*

Evidence to the effect that Mr. Longfield and Mr. Hargreave are perfectly competent to discharge the duties of Vice-Chancellors in the Court of Chancery, more especially if it be reformed as contemplated in the Bill, *Master of the Rolls*, 451–453. 566–575——Disapproval of the prohibition in the Bill by which Mr. Hargreave, as an English barrister-at-law, and of less than fifteen years' standing, would be disqualified from being appointed a Vice-Chancellor in the Irish court, *ib.* 454–465.

Just feeling of dissatisfaction among the Irish bar if judicial offices in Ireland be open to English barristers, without a corresponding opening to Irish barristers to fill English judicial appointments, *Master of the Rolls* (*Ireland*) 1103–1106.

Witness declines to offer an opinion upon the propriety of appointing Mr. Hargreave and Dr. Longfield as Vice-Chancellors, *Right Hon. A. Brewster* 3851, 3852——Explanation as to his having concurred in the 14th resolution of the Commissioners, passed at a meeting on 31 March 1855, that the existing staff of the Incumbered Estates Court should be transferred to the Court of Chancery, and as to his having subsequently concurred in expunging that resolution so far as related to the transfer of Dr. Longfield and Mr. Hargreave, *ib.* 3853–3867.

4. *As to the possibility of One Vice-Chancellor being in time sufficient:*

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2. *Action hitherto of the Masters; increased Jurisdiction recommended.*
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4. *Suggestion that one or more of them be continued to work off the Arrears:*

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Probability, in course of time, of less satisfaction with the working of the Incumbered Estates Court, 2108——Some cases have occurred relative to the sale of minors' estates, in which the proceedings of the Court were not at all satisfactory, 2108-2131——Case of Nolan's minors, in which the Commissioners erroneously sold land over which their control was previously disputed, 2113-2127——Case of Cheevers and Browne, in which the estate was sold under an indemnity deed, whereas it was not in the indemnity deed at all, 2128-2131.

If there were no account of the personal estate to be taken in the case of sales in the Court of Chancery, the proceedings in an ordinary cause might be completed in about six months, 2132——In future sales of incumbered property the primary liability of the personal estate should first be considered, *ib.*——Those portions of the practice of the law in Ireland which are superior to the practice in England should not be abrogated for the sake of assimilation, uniformity of practice being, however, very important, 2133-2140.

Approval of a suggestion by Sir Erskine Perry, whereby instead of pensioning the Masters, as in England, they should be constituted Vice-Chancellors in all those causes now allocated to them by the Lord Chancellor, in dealing with which their powers are at present curtailed, 2141-2155——Absence of arrear in the Masters' offices adverted to, as showing their ability to undertake enlarged functions under the 15th section of Sir J. Romilly's Act, 2142-2149——The bar in Ireland are universally of opinion that two Vice-Chancellors, with two chief clerks and two under clerks, could not keep under the business of the Court of Chancery and the Incumbered Estates Court, including the arrears, 2159.

Opinion that no estate should be sold with an indefeasible title unless the incumbrance amounted to at least one-fourth of its value, 2169. 2176——Very few cases in which, with proper conditions of sale, the Court of Chancery have met with titles so bad as not to admit of their being sold, 2170-2175——The Incumbered Estates Court, as well as the Court of Chancery, would probably sell the whole of the estates of an incumbered proprietor, though his debts might not amount to one-fourth of the purchase-money, 2184-2187.

Murphy, Master (Office of). Return containing particulars as to the date of appointment, salary, &c. of Master Murphy, and of the several persons in his office, *App. p.* 357.

N.

Nolan's Minors. Case of Nolan's minors, in which the Incumbered Estates Commissioners erroneously sold land over which their control was previously disputed, *Murphy* 2113-2127——Part taken by witness in the matter; it appeared to him perfectly clear that the Commissioners had no right to sell the property, *ib.* 2113-2118. 2125——Belief that no condition was imposed upon the purchaser, *ib.* 2114-2116.

Non-Litigatory Business. Responsibility of the Incumbered Estates Commissioners mainly in regard to the non-litigatory business which they have to decide *ex parte*, *Hargreave* 58. 61. 316, 317——Increase of judicial responsibility by the non-litigatory business

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business likely to arise from the proposed sale of unincumbered estates, *Hargreave* 318–320; *Master of the Rolls* 545. 588, 589; *Longfield* 1549, 1550——Doubt, however, as to there being less representation of interest as to title in the case of the sale of unincumbered estates than of incumbered estates, *Master of the Rolls* 546. 549——There is not more litigation at present than there would be in the sale of unincumbered estates, *Right Hon. A. Brewster* 3528–3530——Peculiar care, however, necessary in judges in selling unincumbered property with a Parliamentary title, *ib.* 4011–4019.

Notice of Sale. Before the conditional order for sale of incumbered estates notice is given to the parties whom the petitioners state ought to have such notice, *Hargreave* 23——Notice given after the absolute order for the sale is made, *ib.* 24, 25. 28——Doubt as to tenants having lost interests in land through not having received due notice of sale, *ib.* 172–187.

Probability of cases of injustice arising through mistakes or omissions in the service of notices, *Master of the Rolls* (*Ireland*) 1148. 1151 —— Belief that in very rare instances has injustice been done through insufficient notice to parties, retrospectively or prospectively, *Adair* 2728——Advantage if notice of the sale of incumbered property were given to adjacent proprietors, *ib.* 2897–2899.

See also *Leasehold Interest.* *Middlemen.*

Nugent v. *Nugent.* In this case, about twenty years ago, after the estate, worth about 400 *l.* a year, had been ten years under the management of the Court of Chancery, there was nothing to receive, *King* 2632–2637.

O.

Office Hours (*Court of Chancery*). The office hours are from eleven till four, and there are about 230 days for sitting; in the vacation the hours are from twelve to three, *King* 2606, 2607. 3053–3056.

Offices. See *Building Accommodation.*

Order for Sale. The conditional and the absolute order for sale are often issued before the title is lodged with the Incumbered Estates Court, *Adair* 2803–2806——Short interval generally between the lodging of the petition and the conditional order for sale, *ib.* 2803.

P.

Parliamentary Title. Advantageous results of the system of giving a Parliamentary title, which system should be perpetuated, *Hargreave* 40–45. 51. 96——Sufficient clearness legally of the 27th section of the Incumbered Estates Act, relative to the power of granting an indefeasible title, *ib.* 46–50——Objection to the granting of a Parliamentary title by the court unless there be a *bonâ fide* sale of the estate, *Hargreave*, 341–343. 364, 365; *Longfield* 1793——The Bill of the Attorney-general deals too summarily with the question of Parliamentary title, more particularly in the case of sales of limited and partial interests in land; suggestion hereon, *Hargreave* 989–991.

Greater safety in giving a Parliamentary title if left to the Incumbered Estates Commissioners than if transferred to the Court of Chancery, *Master of the Rolls* (*Ireland*) 1114–1118. 1126–1128. 1134 —— The advantage of giving a Parliamentary title is very great, and should be common to England and Ireland, *Williams* 1270–1276. 1281——Statement as to the Parliamentary title getting worse in course of time, whilst the existing title to unincumbered property improves, *Longfield* 1584, 1585, 1783–1789 ——Great value attached to a Parliamentary title, *Murphy* 1935–1937. 2182, 2183; *Gibson* 2450–2452; *Adair* 2720. 2730, 2731. 2735. 2764. 2876. 2882, 2883.

Opinion that no estate should be sold with an indefeasible title unless the incumbrance amounted to at least one-fourth of its value, *Murphy* 2169. 2176——Approval of power in the Court of Chancery to sell with a Parliamentary title, *Gibson* 2448–2451; *Right Hon. A. Brewster* 3545——The Legislature, rather than the legal profession, are most fitted to deal with the question of Parliamentary title on the sale of unincumbered land, *Gibson* 2452, 2453.

Advantages of a Parliamentary title in its being the root of the title from which to start, *Right Hon. A. Brewster*, 3467–3471. 3479——Respect in which and extent to which a Parliamentary title increases the money value of property, *ib.* 3479. 3495. 3511 ——Estates having a Parliamentary title will gradually again be brought before the court, in order to wipe off incumbrances yet to accrue; advantage of the court hereon, *ib.* 3696–3698.

Resolution of the Committee that the system of conferring an indefeasible title on judicial sales of incumbered estates in Ireland should be perpetuated, *Rep. p.* iii——The

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system should be extended to unincumbered estates, *Rep. p.* iii.——A tribunal ought to exist in Ireland having power to confer an indefeasible title on the sale of estates, the titles to which, being submitted to a judicial investigation, should be found satisfactory, *ib.*

See also *Chancery, Court of (Ireland). Expense. Fictitious Incumbrances. Fraud. Incumbered Estates Court. Indemnity Fund. Settled Estates. Title. Unincumbered Estates.*

Partition of Estates. There should be a power to partition unincumbered as well as incumbered property, *Adair* 2897——Advantage of the power to sell in the Incumbered Estates Court a portion only of an estate to meet a portion of the debts upon it, *Right Hon. A. Brewster* 3896. 3917.

Patronage. If it were contemplated to authorise the Court of Chancery in England to give a Parliamentary title, the Bill for the purpose would not have a job in connexion with it, as is the case with almost every Irish Bill, not excepting the one mainly under the consideration of the Committee, *Master of the Rolls (Ireland)* 1138.

Pensions. Indisposition of the clerks and other officers of the Court of Chancery, including witness, to be pensioned off on their present low salaries, *King* 3106-3108.

Per-centage on Sales. With regard to raising a fund in lieu of that now provided out of the suitors' fees, it is explained that a system of per-centage is proposed to be substituted for the system of fees; approval thereof, *Hargreave* 904-918. 925-933——Grounds for the recommendation that fees and stamps be abolished, and that in lieu thereof there should be a system of per-centage deduction from the proceeds of sales, *Longfield* 1588-1602.

Probable feeling in Ireland against a per-centage upon the sale of estates, when an indefeasible title is given, in lieu of the system of fees and stamps, *Murphy* 1987-1989——If the loss through the abolition of fees be not made up by the State, there should be a per-centage upon the produce of each sale, unincumbered property paying an increased rate, *Gibson* 2317-2328. 2337-2350——There should be an *ad valorem* duty of one and a half per cent., payable by the vendor, on the purchase-money of all estates, incumbered as well as unincumbered, sold with a Parliamentary title, *Adair* 2730-2736. 2886.

Permanent Appointments. Difficulties in the way of a prolonged but temporary operation of the Incumbered Estates Court, the officers of the court being naturally anxious for permanent positions, *Hargreave* 53-56. 130——In witness's recommendations relative to the transfer of the business he has always assumed the permanence of the appointments so transferred, *ib.* 877, 878——The permanency of the court would be more open to attack than the permanency of the Court of Chancery, *ib.* 886. 942-945 Unjustly precarious character of the appointments adverted to as an argument against a separate continuance of the court, *Longfield* 1432.

See also *Incumbered Estates Court*, 5. 6.

Personalty. Different practice of the Incumbered Estates Court and the Court of Chancery with reference to personalty, the former taking no cognizance of personal estate before selling a real estate, *Murphy* 2132; *Gibson* 2263-2265. 2267, 2268; *Right Hon. A. Brewster* 3726-3731——In future sales of incumbered property the primary liability of the personal estate should first be considered, *Murphy* 2132——Consideration generally of the question of inquiry into personalty in the event of an amalgamation of the two courts, *Gibson* 2266. 2269. 2276-2303——Present practice in the Court of Chancery in regard to inquiry into the personal estate before dealing with the real estate, *Gibson* 2280. 2285-2293. 2299. 2300; *Adair* 2862-2864.

Probable extent of delay through first dealing with the personal estate, *Gibson* 2280-2293——Inconsiderable expense of preliminary inquiry into the personal estate, *ib.* 2280-2282——Rare instances of injustice or complaint through the non-inquiry by the Incumbered Estates Court into the personal estate, *ib.* 2302, 2303——Delay in the marshalling of the personal estates adverted to, *ib.* 2402-2407——Inexpediency of providing that before an incumbered estate is sold resort should in all cases be had to the personal estate, *Adair* 2715-2717.

The theory of the Court of Chancery, that the personalty shall first be exhausted, is not always the practice, *Right Hon. A. Brewster* 3730——Opinion that in the contemplated changes in the Court of Chancery it should be provided by a rule of the Court, rather than by the Act of Parliament, that there might be immediate sale of the realty without reference to the personalty, *ib.* 3732, 3733. 3744-3748——Rare instances hitherto, even in the case of sales of property of the nobility, in which there was any personal estate at all, *ib.* 3744-3748.

Pleas and Demurrers. Advantage in there being no system of pleas and demurrers in the Irish Court of Chancery, *Master of the Rolls (Ireland)* 1109.

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Poor-rate. Practice to calculate the value of incumbered estates according to the net receipts, the poor-rate being deducted; propriety thereof considered, *Hargreave* 114–126——Heavy amount of the poor-rates in 1850; consequent depreciation in the selling value, *ib.* 121–126.

Postponement of Sale (Incumbered Estates Court). It is competent to the subsequent incumbrancer to apply for the postponement of the sale if he considers the price offered to be inadequate, *Hargreave* 100, 101——Unless the price be clearly inadequate the Commissioners are peremptory in selling, and postponements are consequently very rare, *ib.* 100, 101, 104–109.

Practice. See *Procedure and Practice.*

Preliminary Proceedings. All preliminary matters previously to the examination of the title, the order for sale, and the distribution of the funds, might be undertaken by an ordinary Master, and then the matter handed over to the proposed Title Master, who should conduct the case to the end, *Gibson* 2274, 2275. 2295–2301. 2398.

Prices. Examination on the question of estates being sold in the Incumbered Estates Court at prices so low, that incumbrancers or mortgagees have been thrown overboard, *Hargreave* 64–80. 92 *et seq.*—— The estate is always sold to the highest bidder, whether he be the original owner or a stranger, *ib.* 67, 68. 70. 77, 78. 92–94——Opportunity of the incumbrancer for seeing that the estate is not improperly sold in the mass and for bidding for the lots, *ib.* 71, 72——High rate of purchase-money obtained during the last few years, *ib.* 95——Rate of purchase which the Commissioners would consider so low as to induce them to stop the sale; few estates have been sold under eighteen years' purchase, *ib.* 102–113.

Instances of higher prices being obtained for land sold in the Court of Chancery than for land sold in the Incumbered Estates Court, *Murphy* 1937–1941——Suggestion that an upset price be placed upon each estate about to be sold in the Incumbered Estates Court, so as to prevent any undue sacrifice to the solvent owner; illustration of the advantages thereof, *Adair* 2826, 2827. 2849–2852. 2858, 2859.

See also *Blessington Estates. Forced Sales.*

Procedure and Practice. Considerable difference at present in the procedure of the Court of Chancery and the Incumbered Estates Court; facility for remedying this by simplifying the practice of the Court of Chancery *Hargreave* 140–152——The great mass of business of the Incumbered Estates Court is done in chambers by each Commissioner separately, *ib.* 387–392——Security desirable that the business, as transferred, shall be performed in the same satisfactory manner as hitherto, *Master of the Rolls* 439, 440—— It might be directed in the Bill that the practice of the Incumbered Estates Court should, as far as it is applicable, prevail in the Court of Chancery, *ib.* 606-610.

Procedure and practice in the Court of Chancery might be dealt with by general orders rather than be subject to legislation, but this would be objectionable as differing from the general English Act, *Master of the Rolls* (*Ireland*) 1071–1073—— Importance of an assimilation, as far as possible, of the practice of the Court of Chancery in Ireland to that of the English Court, *Master of the Rolls* (*Ireland*) 1071–1073. 1109–1111; *Murphy* 1951, 1952. 2133–2140——Satisfactory result generally of the alteration in the procedure of the Court of Chancery in England, though the improvements have not gone far enough, *Williams* 1192 *et seq.*——Good result of the relaxation, under the Chancery Amendment Act, in regard to adjudication without parties being present or being directly served with notice, *ib.* 1315–1322.

Practice of witness in carrying out the business of his office, *Longfield* 1337. 1341. 1401–1403. 1439–1449——Mode of distribution of business among the Commissioners, *ib.* 1343——Adequacy of the clauses in the Attorney-general's Bill for transferring the practice of the Incumbered Estates Court with regard to fees, &c. to the Court of Chancery, *ib.* 1564–1567——Importance of the utmost care, and of increased checks, in order to prevent collusive sales, *ib.* 1793 *et seq.*

Suggestions, and explanations thereon, for the amendment of various defects in the present system of the Incumbered Estates Court, *Adair* 2725. 2897 *et seq.*——With certain amendments in the practice of the Court, it would be quite as efficacious to secure justice as the Court of Chancery, *ib.* 2725——Due exercise by the Commissioners of the rules of the court, *ib.* 2786–2789——The simplicity of the Act and of the rules is one great cause of the success of the court, *ib.* 2820.

Practice respectively in Ireland and England in regard to getting in the entire legal estate before conveyance, *Right Hon. A. Brewster* 3706. 3707——For the future, with the Lord Chancellor as responsible head of the remodelled court, but little evil can be inflicted, even on individuals, whilst additional advantages will accrue, *ib.* 3784, 3785.

Recommendation of the Committee that the Lord Chancellor, Master of the Rolls, and Judge of the Court of Appeal, or two of them, should be armed with extensive power to reform and regulate the practice and procedure of the Court, so as to attain economy

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simplicity, and expedition, and should be bound to make general orders accordingly, *Rep. p.* iv.

See also *Assimilation of the Law.* *Examination of Witnesses.* *Fees and Stamps.* *Rules.*

Public Opinion. Misconception as to the consequences of the Incumbered Estates Act, under which existing proprietors in Ireland are favourable to its operation, *Master of the Rolls (Ireland)* 1016-1020. 1139-1142——Though witness disapproves of the continuance of the Incumbered Estates Court, he professes his willingness to yield to public opinion on the subject, *ib.* 1156-1158——Confidence felt in Ireland in the operation of the court, *Longfield* 1470——Probability, in course of time, of less satisfaction with the past working of the court, *Murphy* 2108.

Purchase-money (*Incumbered Estates Court*). The purchase-money up to a recent period was about 17,000,000 *l.* sterling, *Hargreave* 6, 7——The Commissioners have sold land to the amount of 18,000,000 *l.*, and have distributed to the amount of 14,000,000 *l.*, or thereabouts, *Longfield* 1336; *Adair* 2801.——*See* also *Prices.*

R.

Real Estates. The whole of Part Five, in the Attorney-general's Bill, relative to the sale, partition, and exchange of real estates, might, with improvement, be struck out of the Bill, *Master of the Rolls* 651.

A Vice-Chancellor or the Master of the Rolls must certainly be a thorough master of the law of real property, but even then he might not be able properly to deal *ex parte* with questions of title arising upon the abstract, *Hargreave* 723-726. 735.——Less responsibility and labour to be thrown upon the Incumbered Estates Court if some system were adopted of granting probate to real estates, *ib.* 948-950.

Receivers:

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2. *Number and Classification.*
3. *Qualifications.*
4. *Tenure of Office.*
5. *System of Suretyship.*
6. *Rentals over which appointed.*
7. *Accounts.*
8. *Expense.*
9. *Receiver Master; his Duties and Powers.*
10. *Evils of the system of Receiverships, independently of the Expense.*
11. *Necessity of Receivers in certain cases.*
12. *Effect generally of past Legislation.*
13. *Future Legislation considered, irrespectively of Mr. Whiteside's Bill.*
14. *Main importance of Expedition in Selling.*
15. *Objection to Appointmemt by the Incumbered Estates Court.*
16. *Generally as to Mr. Whiteside's Bill, and sundry of its Provisions.*
17. *Practice of the Court of Chancery in England.*
18. *Resolutions of the Committee.*

1. *Causes of Appointment:*

The main cause is the want of expedition in selling, *Murphy* 1995-2003; *Gibson* 2219, 2220. 2415-2423. 2426-2428; *King* 2968; *Right Hon. A. Brewster* 3689, 3690; *Lyle* 4172. 4234; *Malins* 4330-4336——Various other causes which give rise to the appointment of so many receivers, *Murphy* 2073——Great number appointed in the case of judgments registered as mortgages, *Lyle* 3239, 3240. 4098. 4100——Appointment of receivers generally for other than minor or lunatic matters, *ib.* 3346. 3348. 3356——Considerable number appointed in the case of annuities, *Right Hon. A. Brewster* 3755——The social condition of Ireland, rather than any peculiarity in the law, chiefly creates receiverships, *ib.* 3771, 3772.

2. *Number and Classification:*

Details as to the number of receivers in the offices of the several Masters, and of the Receiver Master, *Hargreave* 378-380; *Murphy* 2006-2010; *King* 2621-2624. 2627. 2702, 2703——Witness, though not Receiver Master, passed 258 receivers' accounts in 1855; fifty-five of these were in minor matters, and seventeen in lunatic matters, *Murphy* 1990-1994.

Particulars relative to the number of receivers in witness's office, and to the nature of the demand, in respect of which the several appointments have been made; the total number is 742, *Lyle* 3236-3243. 4082 *et seq.*——With respect to 314 out of these 742 receivers,

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2. *Number and Classification*—continued.

receivers, they were appointed under Sir J. Romilly's Act, and were probably all with reference to judgments registered as mortgages, *Lyle* 3239, 3240. 4098. 4100——There is only one receiver in lunatic matters in witness's office, *ib.* 3240. 4098——There are fifty-five receivers in minor matters in his office, *ib.* 3240. 4098——Fewer receivers in minor and lunatic matters in witness's office than in the offices of the other Masters, *ib.* 3346, 3347.

How the 742 Chancery receivers in witness's office are made up, as regards the Acts under which appointed, *Lyle* 4084. 4096-4098——Two hundred and sixty-eight receivers were appointed originally in the Court of Exchequer; belief that fifty-seven of these have since been discharged, *ib.* 4084-4086——Of the 742 Chancery receivers appointed by witness since 1850, seventy-eight have since been discharged, according to the office books, *ib.* 4086, 4087——Of these 742 receivers, twenty-six were for the payment of interest, there being more than a year and a half's due, *ib.* 4087-4093——The present number in actual operation in witness's office would seem to be 875, *ib.* 4087.

3. *Qualifications:*

Care taken to select proper and competent persons as receivers, *Murphy* 2005; *Lyle* 3260-3265——Main duty of the receiver to exact the rent; how such duty is performed, *King* 2686, 2687. 2691, 2692——Improvement in the receivers being appointed without reference to the parties concerned, *ib.* 2966.

Rule strictly complied with against the appointment of a barrister or attorney, or of a solicitor's or attorney's clerk, *Lyle* 3233-3235. 3263——Substitution of one receiver for another by the Master, who previously to 1851 had the first appointment, *ib.* 3245, 3246——Intelligence and efficiency of receivers appointed since 1851, *ib.* 3264, 3265.

4. *Tenure of Office:*

The duties of a receiver do not cease without a formal discharge by the court, *King* 2681, 2682——The final accounts represent the termination of the receivership, which, however, may terminate from other causes, *Lyle* 3251, 3252——Imperfect mode of ascertaining when a receivership terminates, *ib.* 3328.

5. *System of Suretyship:*

It is required of each receiver that he give security by recognizance in double the amount of the rental, *Lyle* 3445-3447——Requirement generally that the recognizance be a charge upon real estate, *ib.* 3448-3452.

The sureties for receivers need not necessarily be in possession of landed property, *Right Hon. A. Brewster* 3768——There is doubtless much evil in the system in Ireland of sureties for receivers, still so long as there are receivers there must be sureties, *ib.* 3769, 3770——Approval of the suggestion in Mr. Whitehead's Bill for remedying the system of suing upon the recognizances, *ib.* 3953.

6. *Rentals over which appointed:*

Small rentals over which many receivers are appointed, *Gibson* 2413, 2414; *Right Hon. A. Brewster* 3684——Classification of the receivers in witness's office in regard to the rentals over which appointed, *Lyle* 3440-3442——There are no means of ascertaining the acreage under the receivers, *ib.* 3444, 3445——Inability of witness to state the amounts for which in each case the receivers have been appointed, *ib.* 4083. 4099.

Particulars as to the rentals in several specified cases, as extracted almost at random from the accounts in the registrar's office, over which receivers are appointed, *Lyle* 4100-4126——Small sums for which receivers were appointed previously to the Act 12 & 13 Vict. c. 95, *Right Hon. A. Brewster* 3913, 3914——Granting of receivers chiefly in cases under 100 *l.*, *Lyle* 4184-4188.

7. *Accounts:*

A receiver has fifteen months to pass his first account, and thirteen months every subsequent account; they are not always punctual in thus accounting, *King* 2676. 2952——Cumbrous and objectionable system at present for bringing receivers to account, *ib.* 2960-2963——The Receiver Master should, by a simple process, make the receiver account annually, *ib.* 2960. 2964.

Power to disallow a receiver's poundage, and the costs of his account, as a means of compelling him to account, *Lyle* 3323-3328. 4116, 4117——Facility of the parties in the suit to proceed against receivers by attachment, or to remove them if they do not account, *ib.* 3328-3333. 3341——Comparatively few summonses to receivers to account issued by witness since 1850, *ib.* 3333.

Belief that there has not been a single shilling lost by the default of receivers appointed under the new rules, *Lyle* 3334. 3343——System in regard to the disposal of funds in

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RECEIVERS—continued.

7. *Accounts*—continued.

the receivers' hands; security that all balances are duly accounted for, *Lyle* 3335-3342——Practice of witness, where the rental is small, to require that the accounts should only be passed once in three or four years, on account of the expense, *ib.* 4163, 4164.

8. *Expense:*

Heavy expense of the receivers in the management of estates under the Court of Chancery, *Murphy* 2013, 2014——Greater comparative expense of receiverships in the case of small properties, *Gibson* 2433-2436——Great expense attending on the system of receivers; instance of this, *King* 2629-2639——In the first place, there is always five per cent. to the receiver for receiving the rents, *ib.* 2630——In some cases there might be other charges, to the amount of from five to ten per cent., or even more, *ib.* 2630, 2631——In some small cases the cost of management by a receiver may amount to fifteen per cent., *Right Hon. A. Brewster* 3935-3938.

Reference to, and explanation upon a tabular statement of eleven cases, illustrating costs of receivers over large and small properties; the cost varies from three and a quarter up to twenty-nine per cent., *Lyle* 4127, 4128. 4164-4167. 4177. 4267——In the rentals above 350*l.* a year the average cost of management is under five per cent. per annum, *ib.* 4128. 4164. 4166. 4267.——In the rentals under 350*l.* a year the cost is eleven and a quarter per cent., *ib.* 4128. 4164. 4166. 4267.

Particulars as to the items comprised in passing a receiver's account, as illustrated by the case of Johnston and Nunn, *Lyle* 4129-4148——Allowance of five per cent. to receivers on the collection of each account, over and above other incidental charges, *ib.* 4151-4155——Cost of management, under a receiver, in the case of Gardiner and Blessington adverted to, *ib.* 4166, 4167——Increase of the costs in proportion as the rentals descend, *ib.* 4169-4171——Much less expense now than formerly in the management through receivers, *ib.* 4189.

Great expense of receiverships in England as well as in Ireland, *Malins* 4295. 4334.

9. *Receiver Master; his Duties and Powers:*

Considerable powers and duties vested in the Receiver Master in regard to the appointment and functions of receivers, *Murphy* 2011, 2012; *King* 3168-3191——Appointment since 1851 of all receivers by the Receiver Master Lyle, the receivers in the other Masters' offices being old appointments, *King* 2656, 2657. 2672-2682——Opinion that the Receiver Master does not fully administer the power seemingly given to him in regard to making abatements of rent, &c., *ib.* 3185-3190.

Witness has filled the office of Receiver Master since 1851, having been appointed thereto by the Lord Chancellor, *Lyle* 3224-3226——Control of witness since 1851, under the new rules, over the appointments and duties of all new receivers, *ib.* 3227-3230——All orders by the other Masters for the appointment of receiver are now referred to witness, *ib.* 3243, 3244——Facility of personal communication between the receivers and witness, *ib.* 3287, 3288.

Written statements required from the receiver, and written directions given, as a record in the event of subsequent misrepresentations, *Lyle* 3288-3290——Small cases in which the court has power to order a sale instead of to appoint a receiver, *ib.* 4119-4121——Principle generally or necessarily observed in the appointment of receivers under the Judgment Mortgage Act, pending the sale of the estate, *ib.* 4173-4178. 4211. 4212——Sundry duties devolving upon witness in addition to his duties as Receiver Master; the sums audited yearly in his office amount in the aggregate to upwards of 2,000,000*l.*, *ib.* 4256.

10. *Evils of the system of Receiverships, independently of the Expense:*

The system of receivers is a great evil, and should, as far as possible, be abolished, *Hargreave* 41. 382; *Master of the Rolls (Ireland)* 1078; *Murphy* 2004, 2005. 2073; *King* 2628-2648; *Lyle* 3349. 4264; *Right Hon. A. Brewster* 3680-3682——Uncertainty of tenure under a receiver; injury to the land thereby, *King* 2640-2648——A change of receivers over the same estate is very undesirable, and is rarely made, *ib.* 2662-2665. 2668-2671. 2688, 2689——Limit to the power of the receiver over the tenant, *ib.* 2683-2685. 2690.

Circumstance of receivers over estates in the Incumbered Estates Court being appointed by, and amenable to the Court of Chancery; inexpediency thereof, *Adair* 2791-2800——Evil in the frequent nomination, previously to 1851, of the receiver by the solicitor in the case, *Lyle* 3255-3259——Great mischief in Ireland to the interests of society in the fact that although 18,000,000*l.* worth of incumbered property has been sold, there are still about 1,500 receivers under the Court of Chancery, *Malins* 4325-4329.

11. *Necessity*

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RECEIVERS—continued.

11. *Necessity of Receivers in certain cases:*

Though receivers are a great evil, the office of receiver is often a necessary one, *Master of the Rolls* (*Ireland*) 1078–1081; *King* 2967; *Lyle* 3350–3353; *Right Hon. A. Brewster* 3687, 3688——Undue interference with the rights of property if receivers be interdicted altogether, *Right Hon. A. Brewster* 3756–3761. 3773–3775——Prejudice to the interest of small claimants in cases where there is no remedy by sale, if receivers be not allowed in such cases, *Lyle* 4205–4212——Inexpediency generally and prejudicial effect upon credit if receivers be disallowed, save in minor and lunatic matters, and the remedy be necessarily by sale, *ib.* 4213. 4217–4231. 4265.

12. *Effect generally of past Legislation:*

Considerable diminution of the number of receivers through the sales under the incumbered Estates Court, *Hargreave* 383; *Gibson* 2408–2412. 2424——Probable decrease, under Acts now in operation, of the number of receivers under the Irish Court, and of the frequency of searches for judgments, *Master of the Rolls* 550——Decrease in the number of receivers through recent rules and legislation, *Master of the Rolls* (*Ireland*) 1073–1075. 1079. 1090; *King* 2658–2661; *Lyle* 3344——Improved practice through the appointment of receivers under the Act 5 & 6 Will. 4, *Master of the Rolls* (*Ireland*) 1073; *Right Hon. A. Brewster* 3887. 3897–3902.

The evils of receiverships are less than they used to be, and further reform is being carried out by Receiver Master Lyle, *Gibson* 2424, 2425. 2434, 2435——Immense improvement in the system of receivers through the new rules laid down by Lord Chancellor Sugden, and administered by witness since 1851, *Lyle* 3253 *et seq.*——Advantage of the improved system of receivers in Ireland over the English system, more especially on the score of expense, *ib.* 3364–3372——Beneficial limit placed by the Act of 1849 upon the rights of judgment creditors, more especially in withholding the right to appoint a receiver where the demand did not exceed 150 *l.*, *ib.* 3405–3409.

Effect of the first Receiver Act, the 5 & 6 Will. 4, c. 55, as introduced by Sir Michael O'Loughlin, *Right Hon. A. Brewster* 3678——Power of any mortgagee, under the Act passed in 1773, to appoint a receiver where there is three and a half year's interest due; this Act need not be repealed, as there are very few receivers under it, *ib.* 3678. 3725——Advantage of the abolition by this Act of the *custodiam* process, *ib.* 3678——Different systems of dealing with land previously to the Receiver Act, 5 & 6 Will., 4, c. 55, namely by writ of *levari facias*, by grant of *custodiam*, by writ of *elegit*, and by petition under the Act 11 & 12 Geo., 3; mischief of these systems, *ib.* 3870–3896.

13. *Future Legislation considered, irrespectively of Mr. Whiteside's Bill:*

Check upon the appointments of receivers under the Bill of the Attorney-general, *Master of the Rolls* (*Ireland*) 1076, 1077——Suggestions, in addition to those of Mr. Whiteside, for an amendment of the system, *Murphy* 2073——Amendment desirable as regards the clause in the Act of 1850, whereby judgments, however low the amount, may be converted into mortgages, and receivers appointed, *Murphy* 2080–2092; *King* 2649–2656. 2965; *Lyle* 3358–3360. 3373 *et seq.*; *Right Hon. A. Brewster* 3676–3679. 3762–3767——Rules should be furnished to each receiver as a means of guidance in the performance of his duties, *King* 2977, 2978.

Advantage on the whole of depriving mortgage creditors of the right to obtain receivers; the remedy by sale should, however, be facilitated as much as possible, and the court should be empowered to grant a receiver when the mortgagee cannot get into actual possession, *Lyle* 3354–3360. 3373–3404——In cases where the management would cost more than the amount of interest due to the judgment creditor, receivers should never be appointed at all, *ib.* 3424–3426. 3435.

As regards a check upon receiverships, there might be the twofold consideration of the amount of debt and of rental, but the limit of 150 *l.* as to debt should be extended, *Right Hon. A. Brewster* 3773–3781. 3932. 3949–3952——Recommendation that the Legislature repose a large discretion in the judge as to the circumstances which shall justify the non-allowance of a receiver, *Lyle* 4200–4204. 4237–4241——The Legislature should as far a possible define the cases in which the court should have power to grant receivers, *ib.* 4214–4216.

14. *Main importance of Expedition in Selling:*

Evidence in decided approval of sales at the earliest possible stage of the proceedings, as the best means of doing away with receivers, *Murphy* 1995–2003; *Gibson* 2219, 2220. 2421–2423. 2426–2428; *King* 2968; *Right Hon. A. Brewster* 3689, 3690. 3927–3931. 3944–3948; *Lyle* 4172. 4234; *Malins* 4330–4336.

15. *Objection to Appointment by the Incumbered Estates Court:*

Difficulty in giving the Incumbered Estates Court the power of appointing receivers, in the event of a temporary continuance of the court, *Hargreave* 947. 992, 993; *Master of the Rolls* (*Ireland*) 1089, 1090.

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RECEIVERS—continued.

16. *Generally as to Mr. Whiteside's Bill, and sundry of its Provisions:*

Extent to which Mr. Whiteside's Bill tends to put a stop to the evils incident to the system of receivers, *Longfield* 1644-1657; *Murphy* 2073-2075; *Gibson* 2430, 2431. 2437-2441; *Lyle* 4232-4236——Approval of receivers not being appointed unless the property exceeds 200 *l.* a year, *Murphy* 2074, 2075——Approval in the main of the provisions of the Bill, *King* 2953 *et seq.*——Approval of a limitation in regard to the amount of property over which receivers should be appointed, *ib.* 2956, 2957——Approval of the proposition for empowering receivers to grant leases for twenty-one years, *ib.* 2958, 2959.

Approval of the limitation, as in Mr. Whiteside's Bill, being with regard to the rental of the estate, and not with regard to the amount of the debt, *Lyle* 3427. 3431. 4179-4183——Injury and injustice in various cases in the event of the adoption of Mr. Whiteside's proposition that no receiver shall be appointed where the rental is under 200 *l.* a year, *ib.* 3428. 3432-3439. 4180. 4237-4241——The adoption of a limit of rental of 200 *l.* a year would doubtless reduce the number of receivers very considerably, to the extent probably of one-half, *ib.* 3429, 3430. 3440, 3441. 4266, 4267——Injury to annuitants and jointuresses if receivers be not appointed where the rental of the property is under 200 *l.* a year, *ib.* 3432. 3437——Injury in cases of demands for tithe rentcharge if receivers are not appointed unless the rental of the property amounts to 200 *l.* a year, *ib.* 3432-3434.

Advantage of the provision for removing the power of a mortgagee, who does not pray for a sale, to get a receiver, *Lyle* 4233——Approval of preventing receivers in cases where less than a year's interest is due, *ib.* 4235, 4236——Many of the suggestions in the Bill are already provided for in the Court of Chancery, *ib.* 4258-4263.

17. *Practice of the Court of Chancery in England:*

Custom of the court not to grant a receiver in a creditor's suit unless it be first shown that the personal estate is insufficient to pay the debt, *Malins* 4271——Discretion exercised by the court in granting receivers in cases of judgment creditors instituting suits under the Act 1 & 2 Vict. c. 110, *ib.* 4272-4275——Steps taken to secure the intermediate rents in cases where there is likely to be deficiency after the proceeds of the sale, *ib.* 4272. 4335——Rule never to appoint a receiver upon the application of a legal mortgagee, *ib.* 4276, 4277——Considerable discretion exercised generally by the court in regard to receivers, whose appointment the court is, most properly, very slow in sanctioning, *ib.* 4285-4295. 4311 *et seq.*

Particular cases of arrears of interest, bad management by the mortgagee, &c., in which receivers are granted in England, *Malins* 4285-4294. 4311-4316. 4322——Appointment sometimes of parties beneficially interested as receivers, without salary, *ib.* 4295, 4296. 4323——Recognizance with sureties required of the receivers, as in Ireland, *ib.* 4297-4301——Rule of the court that each receiver must pass his account half-yearly; moderate expense attendant thereon, *ib.* 4300-4310——Unwillingness of the court to grant a receiver in many cases, even where are some arrears of interest due, *ib.* 4317-4322——Principle of the court not to help those who can help themselves, *ib.* 4318.

18. *Resolutions of the Committee:*

Opinion that the law and practice of the Court of Chancery in Ireland in relation to the appointment of receivers over real estates requires to be further amended, *Rep. p.* iv——The appointment of receivers should be discouraged, *ib.*

In order to lessen the necessity for the appointment of receivers in suits for the sale of land, the sale should take place at the earliest practicable stage of the suit, *Rep. p.* iv.

The court should be empowered to refuse the appointment of a receiver, unless it should be made to appear that the interest and protection of the parties required it, *Rep. p.* iv.

The court should also be empowered to refuse a receiver where it appeared that such appointment would not be productive of substantial benefit to the parties, *Rep. p.* iv.

The Act 11 & 12 Geo. 3, c 10 (Irish), by which courts of equity in Ireland are authorised to appoint receivers, for the purpose of discharging arrears or interest on mortgages, should be repealed, *Rep. p.* iv.

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Records (*Court of Chancery*). The records of the Court of Chancery are in a most disgraceful state, through the want of proper accommodation, *Murphy* 2045-2051.

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Records (*Incumbered Estates Court*). The records and documents of the court are not now in any confusion, and might be readily transferred and arranged in another building, *Hargreave* 241-245——As sales takes place the records become practically valueless, *ib.* 802, 803.——*See* also *Building Accommodation. Title Deeds.*

References and Reports. The Masters should be freed from the necessity of reference to the Chancellor before undertaking a suit, *Gibson* 2225-2229. 2357——Considerably less work when the present inexpedient system of references and reports is done away with, *Right Hon. A. Brewster* 3647.

Opinion of the Committee that the Lord Chancellor, Master of the Rolls, and, subject to such rules as the Chancellor shall make, the Masters in Ordinary, should have power to obtain the assistance of valuators, surveyors, accountants, merchants, engineers, actuaries, or other scientific persons, and enable such court or judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such person, *Rep. p.* iii——Subject to the above rules, every equity judge should dispose of the whole suit before him, without any reference, *ib.*

Registrar. If the Master's jurisdiction be enlarged, as proposed by witness, each Master should, in addition to his present staff, have a registrar, *Gibson* 2365-2370——The registrars should act as Taxing Masters, *ib.* 2378. 2381-2383. 2462. 2464. 2483, 2484. 2490-2496. 2510-2512.

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All the conveyances from the Incumbered Estates Court should be registered within a certain period, *Adair* 2897——Doubt as to the expediency, for the sake of assimilation of legislation, of waiting for the report of the English Commission in regard to the registration of titles before adopting any new principle in Ireland, *Right Hon. A. Brewster*, 3987-3990.

Rehearing. Proposition, at variance with the report of the Commissioners, but fully concurred in by Mr. Blackburne, that every case of rehearing, including a rehearing of the Lord Chancellor's own judgment, should go before an appellate court, comprising a Lord Justice as well as the Lord Chancellor, *Right Hon. A. Brewster* 3546-3591——Distinction between an appeal and a rehearing, *ib.* 3548-3551——Great expense and delay in the case of appeals from Ireland to the House of Lords, as compared with a rehearing in Ireland, *ib.* 3585. 3587-3591——Rare occurrence of an appeal to England if there be a rehearing as proposed, *ib.* 3586.——*See* also *Appeals.*

Re-incumbrance of Estates. The power immediately to re-incumber an estate after a Parliamentary title is given should be checked, *Williams* 1274.

Rental of Estates. Defect in the want of an accurate rental enforced and prepared before the appointment of a receiver, *Murphy* 2073.——*See* also *Receivers*, 6.

Rentcharges. The power, as proposed in the Government Bill, of selling an estate and taking as consideration a permanent rentcharge, is in direct violation of the principle of the Incumbered Estates Act, and is very undesirable, *Master of the Rolls* 516-526. 653——Doubts as to the propriety of the clause providing that in the sale of incumbered estates the consideration might be a rentcharge without limit, *Longfield* 1382-1385.

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Repairs and Improvements. Advantage of the receiver being empowered, in every case of arrears of rent, to allow sums for keeping the premises in repair, *Murphy* 2076——Approval of increased power in receivers over incumbered estates in regard to repairs and improvements, *King* 2985-2987.

Necessity of a report to the court before witness can order expenditure, unless it be a small sum on repairs, *Lyle* 3307-3313——Improvement if witness could, of himself, make orders for expenditure on repairs, *ib.* 3314-3316——Absence generally of power either in witness or the court to lay out money in improving the land, *ib.* 3317, 3318——If both the owner and creditors wished for expenditure on improvements, witness would not hesitate to authorise it, *ib.* 3319-3322.

Repurchases. In a few instances parties who have sold incumbered estates have repurchased them, *Hargreave* 63.

Responsibility. Advantage of the great responsibility now devolving on the Incumbered Estates Commissioners, *Longfield* 1465.

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Richards, Baron. Mr. Baron Richards could not at first attend much to the administrative business of the Incumbered Estates Court, *Hargreave* 247–250——During the last two years, Mr. Baron Richards has taken the same share of the business as Mr. Hargreave and witness, *Longfield* 1338–1340. 1342——Possibility of the great bulk of titles coming before Baron Richards being advised upon by his son, as counsel, *ib.* 1478–1487——Desirableness at first of the judicial experience of Baron Richards, *ib.* 1515, 1516——Baron Richards, as well as witness, reads the abstract of titles, *ib.* 1715.

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Rolleston, Mr. Exception taken to the expressed opinion of Mr. Rolleston, an eminent practitioner in the Incumbered Estates Court, that parties have lost valuable interests in land by not being served with notice of intended sales, *Hargreave* 174–179; *Longfield* 1491–1501; *Right Hon. A. Brewster* 3541–3544.

Rolls, The Right Hon. the Master of the. (Analysis of his Evidence.)—Had the care of the Incumbered Estates Bill on its being brought into the House of Commons in 1849; 431——Served on a Royal Commission, which reported in 1855 in favour of the extension and permanency of the system of the sale of estates giving a Parliamentary title, 432–434——Adduces forcible reasons for the conclusion that unincumbered proprietors should have the same benefit in regard to Parliamentary title as are given by the Act to incumbered proprietors, 435–438.

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Report, 1856—*continued.*

Rolls, The Right Hon. the Master of the. (Analysis of his Evidence)—*continued.*

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Scrivenery Clerks. Return showing the duties performed by the scrivenery clerk in witness's office, *Murphy* 1915——Confidential duties devolving on the scrivenery clerks; their tenure of office is nevertheless uncertain, and they have no legal claim to compensation, *King* 3129–3140.

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Settled Estates. All those clauses in the Government Bill relative to settled estates should be matter for distinct legislation, *Master of the Rolls* 517. 653. 660–665——Disapproval of the whole portion of the Bill relating to the sale of settled estates and unincumbered estates, *Master of the Rolls (Ireland)* 1003–1005.

Usefulness of the power sought for relative to settled estates; it would be as well in a separate Bill, *Longfield* 1381. 1397——Objections to a Parliamentary title being given on the settling of an estate, *ib.* 1793. 1821–1826. 1868——A main objection is the want of notoriety of a change of possession, *ib.* 1823——There is, moreover, no fund to redress any grievance that might arise, *ib.* 1823. 1825——It might be desirable to permit settled estates to be exchanged or sold, *ib.* 1831, 1832.

Inexpediency, for several reasons, of the clauses of the Government Bill relative to the sale of settled estates, *Gibson* 2574–2586; *Right Hon. A. Brewster* 3749–3755——Including settled estates, it is impossible to say what proportion of the incumbered property in Ireland has been taken into the Incumbered Estates Court, *Right Hon. A. Brewster* 3708–3710.

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Six Clerks' Office. Abolition of the Six Clerks' Office, and compensation of the officers out of the Compensation and Fee Fund, *King* 3079. 3089, 3090. 3137–3140.

Smith, Mr. Efficiency of Mr. Smith, assistant clerk to Master Henn, *King* 3027. 3031.

Snagg's Case. Explanation as to 11,000 *l.* or 12,000 *l.* having been paid wrongly into the Incumbered Estates Court in Snagg's case, *Longfield* 1586, 1587.

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Solvent Proprietors. Beneficial operation of the Incumbered Estates Court in transferring land to solvent proprietors capable of properly cultivating it, *Longfield* 1460–1463.

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STAFF:

1. *Court of Chancery as now constituted.*
2. *Incumbered Estates Court.*
3. *Court of Chancery as remodelled.*
4. *Recommended employment of the Staff of the Incumbered Estates Court.*

1. *Court of Chancery as now constituted:*

Insufficient staff of the Masters, *Gibson* 2516. 2518——Non-increase in the staff of the court, notwithstanding the great increase of business under Sir J. Romilly's Act, *King* 2604, 2605——Existing staff of each office, *ib.* 3026.

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2. *Incumbered Estates Court:*

Each of the three Commissioners has in his chambers an examiner and examiner's clerk, the total staff numbering about thirty persons, *Hargreave* 190, 191; *Longfield* 1508——Insufficiency at first of the subordinate staff of the court, *Hargreave* 335——The officers act generally cordially together, *ib.* 827–829——There have been no additional appointments lately, *Longfield* 1509–1512——Adequacy of the present staff of the court to transact the current business and work up the arrears, *Adair* 2892.

Return showing the names, age, date of appointment, amount of salaries and other emoluments of all persons holding office in the court, with the dates of such of them as have been called to the bar or enrolled as attornies, *App. p.* 355.

3. *Court of Chancery as remodelled:*

The aid afforded to each Commissioner by an examiner and an examiner's clerk is not nearly so great as the aid that would be given by the staff contemplated in the Bill, *Hargreave* 227–234. 256. 350. 393 *et seq.*——The staff of the court should be properly increased before the proposed transfer of business, *ib.* 346, 347——Strength of the staff and amount of business of the English court as compared with the proposed staff of the Irish court, and the business likely to devolve upon it, *ib.* 373–377——Examination in general approval of the staff contemplated by the Act, which staff, if insufficient, should be increased forthwith, *Master of the Rolls* 531. 551 *et seq.* 568–575. 592–597.

Belief as to the sufficiency of the staff of the Court of Chancery to deal also with the business of the Incumbered Estates Court, *Longfield* 1529–1535. 1539–1541——Objection to Mr. Whiteside's proposition for naming in the Act the several officers and judges to be appointed, *ib.* 1577, 1578. 1606–1629——Considerable additional time which witness could devote to judicial duties if he had an adequate staff, *ib.* 1702–1704. 1755–1769. 1779–1782——Greater check upon fraudulent sales if there were a more adequate staff, *ib.* 1797, 1798.

Inadequacy of the staff attached to the Masters, supposing the latter to be empowered to sell estates with an indefeasible title, *Murphy* 1912–1915——Largely increased expense of staff if unincumbered estates were dealt with in the same way as incumbered property, *ib.* 1917. 1927——The proposed Title Master should have the same staff as the other Masters, *Gibson* 2384——Inadequacy of the staff contemplated by the Attorney-general for the combined courts, *Adair* 2825——Each Master should be provided with two chief clerks, one of them to act as registrar, and a scrivenery clerk, *King* 3025, 3026——Importance of efficient clerks under the Vice-Chancellors, *Right Hon. A. Brewster* 3647. 3658, 3659——Considerably larger staff required by witness if the receivers under him be largely increased, *Lyle* 4257.

4. *Recommended Employment of the Staff of the Incumbered Estates Court:*

Strong recommendation that the present officers and staff of the Incumbered Estates Court be transferred, together with the business, to the Court of Chancery, *Master of the Rolls* 441 *et seq.* 568–574; *Right Hon. A. Brewster* 3036. 3594 *et seq.* 4052–4056——Explanation as to the omission of the foregoing recommendation in the Report of the Commissioners in 1855, *Master of the Rolls* 441, 442. 614–621——Nearly all, if not all, of the present establishments of the Incumbered Estates Court should be transferred, *Gibson* 2386——The transfer or discontinuance of the several officials must rest with Government, *ib.*

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Stafford and Morris. Cost in this case of twenty-nine per cent. for the management through a receiver; extraordinary character of the case and the expenses, *Lyle* 4128. 4164–4166. 4267.

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Stamp Duty. The conveyance to the purchaser under the Incumbered Estates Court is subject to the ordinary *ad valorem* duty, but there are no stamps, as in the Court of Chancery, upon the deeds in court, *Hargreave* 148. 151, 152. 895-897——Practice of the court to require all documents to be stamped, *Longfield* 1604, 1605——Large sum likely to be raised from the stamp duty on conveyances in the event of unincumbered property being sold in the court, *Gibson* 2312. 2328-2331.

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Stanford, Mr. Fitness for the office of registrar of Mr. Stanford, Master Henn's son-in-law and examiner; his efficiency as examiner adverted to hereon, *King* 3027-3047. 3053-3059—Letter from the late Lord Chancellor Blackburn to Mr. Stanford, testifying to his efficiency, *ib.* 3027. 3057——Testimony to the competency of Mr. Stanford, *Right Hon. A. Brewster*, 3790-3793.

Suitors' Fee Fund. The Suitors' Fee Fund has been from time to time nearly bankrupt, *Murphy* 2021——Charge upon the Consolidated Fund in the event of the deficiency of the Suitors' Fee Fund, *King* 3083-3088.

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Supplemental Petitions. Possible injury to individual estates under the Incumbered Estates Court if in working off the arrears supplemental petitions were not admissible, *Adair* 2896.

Surveys. The surveyors for the Incumbered Estates Court have adequate funds, *Longfield* 1689, 1690——All surveys for the court should be made by some recognised surveyor, *Adair* 2897——The solicitor in the case should not have the nomination of the surveyor, *ib.*

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Taxation of Costs. There are no arrears in the taxation of costs in the Incumbered Estates Court, *Hargreave* 221——Arrear under the new system of taxation of costs in the Court of Chancery, *Hargreave* 222-225; *Gibson* 2454 *et seq.*; *King* 3122, 3123——Importance, if the business be transferred, to apply a remedy to the arrear in the taxing department of the Court of Chancery; an additional taxing officer should be appointed, *Hargreave* 970-975.

Varying time in the taxation of costs in the Court of Chancery in England; a bill may be taxed in six weeks, or it may be hanging over for two years, *Williams* 1323-1332——Insufficient staff in the taxing office, and consequent arrear, *ib.* 1327, 1328.

Evidence in detail relative to the taxing department of the Court of Chancery, its unsatisfactory state, and the means of remedying the same, *Gibson* 2377-2379. 2454-2512——The taxation of costs in each office should rest with the judge, or rather the registrar in such office, *ib.* 2378. 2381-2383. 2462. 2464. 2483, 2484. 2490-2496. 2510-2512——Much less satisfactory system of taxation since the establishment of the new and distinct department a few years ago, and of strict rules for their guidance, *ib.* 2454 *et seq.*——There are six Taxing Masters, with a staff of clerks, *ib.* 2457. 2479. 2480——Satisfactory system of taxation of costs in the Incumbered Estates Court, where there is only one Taxing Master, *ib.* 2481. 2488. 2509——Belief that the Lord Chancellor himself has said that the rules are too strict, *ib.* 2489.

Insufficiency at first of the staff of the new taxing department of the Court of Chancery, adverted to as a main cause of the subsequent arrear, *King* 3144——Great care and caution necessary in the taxation of costs in the Court of Chancery as compared with the Incumbered Estates Court, *ib.* 3144. 3146-3149——Considerably larger aggregate amount taxed for costs in the former court, *ib.* 3144. 3202, 3203——Larger amount also taxed individually by the Taxing Masters in the Court of Chancery than in the Incumbered Estates Court, *ib.* 3144, 3145.

Statement by the Taxing Masters, dated 31 May 1856, defending the manner in which their department is and has been conducted, and drawing a comparison between the taxation of costs in the Incumbered Estates Court and in the Court of Chancery, *App. p.* 350-352——Considerably larger number of items to be taxed, and very much greater labour in the taxation by the Court of Chancery; papers in illustration of this; *ib.* 350-354.

Amount of miscellaneous costs taxed in each of the years 1850-54; total amount of, 901,405 *l.* 19 *s.* 10 *d.*, *App. p.* 354——Similar statement in regard to costs of receivers' account; total amount of, 963,909 *l.* 9 *s.* 8 *d.*; *ib.*

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Tenants. The ascertainment of tenancies might well be transferred to a chief clerk, if witness had one, *Longfield* 1755. 1760–1762——Possibility of a tenant being damnified through an erroneous statement of the rental of his occupation, as about to be sold, *ib.* 1837–1847——Respect in which witness's investigation refers to the state of the tenancies, *Murphy* 1900, 1901——Difference in practice, but not in theory, between the jurisdiction of the Incumbered Estates Court and the Court of Chancery in regard to occupying tenants, *Right Hon. A. Brewster* 3534, 3535——System of compensation to tenants in sales under the Court of Chancery, *ib.* 3534. 3536——Advantage of the system of recognition and compensation of tenants by the Incumbered Estates Courts, *ib.* 3536–3544.

Tenants' Recognizances. Expense saved by the abolition of the tenant's recognizance, which, as security for the rent, was quite useless, *Lyle* 3269, 3270. 3282–3284.

Tenure of Land. Different periods of tenancy under the Court of Chancery, *Lyle* 3273 ——Witness prefers a tenancy from year to year, and adopts it when he can, *ib.* 3273–3277. 3345.

Title. The Incumbered Estates Commissioners would hold a sale as good, even though they might err in concluding that the title was perfect, *Hargreave* 31——The Commissioners are exceedingly strict about the title, *Gibson* 2316——Vitiating effect subsequently of a fraudulent sale, notwithstanding the Parliamentary title, *Right Hon. A. Brewster,* 3487–3490. 3992–4010——Dissent from Dr. Longfield's views hereon, *ib.* 3992–3997.

Witness has not met with any case of estates sold in the Court of Chancery in England in which the title has subsequently been found defective, *Williams* 1269, 1270 ——Limited extent to which a sale in the Court of Chancery in Ireland can be considered to give a satisfactory title to the purchaser, *Murphy* 1895. 1899. 1904–1910—— Practice of the Court never to sell what is known to be a bad title, *ib.* 1895, 1896—— Very few cases in which, with proper conditions of sale, the Court of Chancery have met with titles so bad as not to admit of their being sold, *ib.* 2170–2175.

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Title Deeds. Requirement in regard to title-deeds being lodged in the Incumbered Estates Court, *Hargreave* 796, 797——Practice as regards access to the deeds; no deed has ever been purloined, *ib.* 804–809.

TITLE MASTERS OR COMMISSIONERS:

1. *Evidence in Favour of their Appointment.*
2. *Evidence in Opposition thereto.*

1. *Evidence in Favour of their Appointment:*

Suggested appointment of two Title Commissioners of the Court of Chancery, who should investigate the titles of incumbered property as well as of unincumbered property if sold in the court, *Murphy* 2055–2069. 2104——Advantage of reference to the proposed Commissioners rather than to a roster of conveyancers, as in England, *ib.* 2057. 2064, 2065.

Recommended transfer to the Court of Chancery of two of the Incumbered Estates Commissioners as Title Masters, whose duties and functions should be the same as at present, *Gibson* 2205, 2206. 2351–2355. 2397——Extent to which the business of the Court of Chancery would devolve on the new branch or department of the court in the event of the sale of incumbered and unincumbered property in such department, *ib.* 2216–2224. 2258–2264.——The Title Masters alone should examine the abstracts of title, *ib.* 2351–2355——If the arrears be transferred, there should be three Title Masters, *ib.* 2556——Competent persons as Title Masters could readily be selected from the Irish bar, *ib.* 2572.

Suggestion that the principle of the Incumbered Estates Court be retained, and engrafted on the Court of Chancery, with two Title Commissioners or Masters to carry it out, *Adair* 2711-2713. 2718. 2926. 2929–2934——After a decision by the Court of Chancery that an estate should be sold, all subsequent dealings with the estate should be through means of the Title Masters, *ib.* 2714——Any rules made by the proposed Title Masters should be subject to the approval of the Lord Chancellor, *ib.* 2931.

2. *Evidence in Opposition thereto:*

Doubt as to the advantage of appointing a Title Master for the Court of Chancery, *Longfield* 1716–1718.

Evidence opposed to the proposition for the extension of the jurisdiction of the Masters and for the appointment of Title Masters, *Right Hon. A. Brewster* 3598 *et seq.*—— Anticipated public dissatisfaction with the office of Title Master, without reference to the individual, *ib.* 3603. 3607. 3631——If there were Title Masters there would scarcely be any business for the other Masters, *ib.* 3666.

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U.

UNINCUMBERED ESTATES:

1. *Approval of a right of Sale with a Parliamentary Title.*
2. *Objection to the foregoing Proposition.*
3. *Increase of Business if the Proposition be adopted.*

1. *Approval of a right of Sale with a Parliamentary Title:*

The owner of an unincumbered estate should be empowered to petition for the sale of his estate, *Hargreave* 52——Reasons for the conclusion that unincumbered proprietors should have the same benefit in regard to Parliamentary title as are given by the Act to incumbered proprietors, *Hargreave* 344, 345; *Master of the Rolls* 435-438; *Longfield* 1390-1396. 1548. 1583-1585. 1783; *Right Hon. A. Brewster* 3461-3467——Opinion that it is not contemplated, under all circumstances, to permit the sale of an unincumbered estate, but to repose a discretion in the judge to act as he may think fit, *Hargreave* 360.

Advantage in applying to Ireland the proposition relative to the sale of unincumbered estates, without waiting for its application to England at the same time, *Master of the Rolls* 654-659——With increased checks against the possibility of mistakes, witness further recommends the granting of a title in the case of unincumbered property; nature of these checks, *Longfield* 1795-1818. 1864-1868——A Parliamentary title should be extended only to all unincumbered estates *bonâ fide* sold, *Adair* 2729, 2730. 2784-2788.

Concurrence in the recommendation of the Commissioners hereon, *Right Hon. A. Brewster* 3461-3466——Novelty of the principle, and magnitude of the question of a transfer of unincumbered property with a Parliamentary title, *ib.* 3971-3973. 3991——Extent to which any limit should be placed upon the right of an unincumbered proprietor to obtain a Parliamentary title, *ib.* 4020-4026.

Recommendation of the Committee that the benefits resulting from the system of conferring an indefeasible title should be extended to unincumbered estates, *Rep. p.* iii.

2. *Objection to the foregoing Proposition:*

Evidence to the effect that the powers of the Commissioners are inconsistent with the security of all landed property, more especially of unincumbered property, *Master of the Rolls* (*Ireland*) 1012-1016. 1113-1115. 1143-1153——Disapproval in principle of a power in the Court of Chancery to sell unincumbered estates with an indefeasible title; argument hereon as to the propriety of distinction between incumbered and unincumbered property, *Murphy* 1916-1927. 2160-2169. 2176-2181——Double care necessary in dealing with unincumbered property, *ib.* 2054, 2067.

Sundry arguments strongly opposed to the proposition for the conveyance of unincumbered property in Ireland with a Parliamentary title through means of the Court of Chancery, *Malins* 4345 *et seq.*——There is no occasion which can justify the adoption of the principle, *ib.* 4346. 4352. 4359——The sale of unincumbered property in Ireland as contemplated could not safely work, *ib.* 4354. 4359-4376——Necessity of the judges referring the abstract of title in the case of unincumbered property to the officers of the court, *ib.* 4359-4362.

3. *Increase of Business if the Proposition be adopted:*

Anticipated considerable increase of business consequent on the changes proposed relative to the sale of incumbered estates and of unincumbered estates; the amount of increase is quite conjectural, *Hargreave* 158-160. 202. 219. 276-284. 314, 315. 337-340. 347, 348, 352-362——Comparatively small increase of business if the Court be empowered to confer a title upon unincumbered estates, *Longfield* 1386-1389. 1408. 1409-1543, 1544; *Right Hon. A. Brewster*, 3471. 3493-3496.

Anticipated immense increase of business if there be no restriction in regard to the sale of unincumbered estates with a Parliamentary title, *Murphy* 1928, 1929. 1932-1936; *Gibson* 2312. 2328, 2339. 2333-2336——Small increase of business if a *bonâ fide* sale be necessary, *Gibson* 2313. 2332——Improbability of unincumbered owners of limited or derivative estates coming before the court for the sake of a Parliamentary title, *Right Hon. A. Brewster* 3507, 3508.

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V.

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Valuation. Practice of the Incumbered Estates Court in regard to the valuation of estates, before sale, by a valuator appointed by the court; how far made use of by the Commissioner in selling, *Adair* 2828–2848——Other means of the Commissioner for ascertaining the value beyond the official valuation, *ib.* 2853–2855.

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Suggestions for a revision of the mode of payment of solicitors, the present mode having a decided tendency to prolong the existence of Chancery suits, 1208–1219——Larger influx of suitors in consequence of the amended administration of justice in the court, 1221–1223——In all equity proceedings, as much judicial business as possible should be thrown upon the judge, 1224——Importance of the judge exercising a direction and supervision over the administrative business, 1224. 1244–1247. 1256——The clerk should not perform any judicial business, 1224.

Evidence relative to the roster of six expert conveyancers, to whom questions of title are referred by the judges; advantage in some respects of such roster, 1225–1243. 1291–1299——The Master in Chancery and the conveyancer received fees under the old system, but now the conveyancer alone is paid; regulation hereon, 1228–1232——Number of conveyancers at the bar; a large quantity of conveyancing is also done by solicitors, 1234–1237. 1287–1290——A sale under the court does not give an indefeasible title, 1242, 1243. 1299–1301——Explanation as to a demand having been made for additional chief clerks on the refusal of Parliament to appoint additional judges, 1250–1255.

Witness has not met with any case of estates sold in the Court of Chancery in which the title has subsequently been found defective, 1269, 1270——The advantage of giving a Parliamentary title is very great, and should be common to England and Ireland, 1270–1276. 1281——The power immediately to re-incumber an estate after a Parliamentary title is given should be checked, 1274——Considerable additional judicial staff required in England in the event of a Parliamentary title being given to all estates through the medium of the Court of Chancery, 1275–1280. 1287–1290——Power of the Lord Chancellor to regulate the mode of remuneration of solicitors; a new order is about to be issued on the subject, 1282–1286——Selection of conveyancing counsel for the purpose of advising the Court of Chancery, rather than the purchaser or seller of the estate, 1298–1301.

Report, 1856—*continued.*

Williams, William. (Analysis of his Evidence)—*continued.*

Evidence to the effect that in the event of a system of Parliamentary title being adopted, there should be an indemnity fund provided to meet the case of those whose rights might be defeated by a judicial mistake in the sale of the estates, 1301-1314—— Good result of the relaxation under the Chancery Amendment Act in regard to adjudication without parties being present, or being directly served with notice, 1315-1322—— Varying time taken in the taxation of costs in the Court of Chancery; a bill may be taxed in six weeks, or it may be hanging over for two years, 1323-1332.

Wills. Possibility of injustice on the score of a will not being discovered till after the estate has been sold and the proceeds distributed, *Longfield* 1465-1468——It should be compulsory to register all wills within two years after the death of the testator, *Adair* 2899, 2912-2914. 2949-2951.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

NAWÁB OF SURAT TREATY BILL.

Ordered, by The House of Commons, *to be Printed,*
9 *June* 1856.

SELECT COMMITTEE ON THE NAWAB OF SURAT TREATY BILL.

Lunæ, 28° *die Aprilis*, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

28 April 1856.

Mr. *Hope Scott*, Mr. *Ayrton*, and Mr. *Harcourt* appeared as Counsel for the Promoter.

Messrs. *Gregory*, *Gregory*, *Skirrow*, & *Rowcliffe* appeared as Agents for the Promoter.

The petition of the East India Company against the Bill was read.

Mr. *Bovill*, Mr. *Rolt*, and Mr. *W. H. Melville* appeared as Counsel for the Petitioners.

Mr. *Hope Scott* was heard to open the case for the Promoter of the Bill.

[Adjourned to Thursday next, at Eleven o'clock.

Veneris, 2° *die Maii*, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

2 May 1856.

Mr. *Hope Scott* was further heard to open the case on the part of the Promoters.

Mr. *Hope Scott* stated that he did not propose calling any witnesses, but that he should rely upon a despatch of Lord Mornington's, dated 3d of February 1799, which was to be found amongst the papers presented to The House of Commons upon Indian affairs (Surat) in 1806, and upon the diary of Mr. Duncan of the year 1800, contained in the same Parliamentary papers. He also proposed to put in the following documents, to which the East India Company, the opponents of the Bill, consented.

ARTICLES of AGREEMENT between the Honourable East India Company and their Successors, and the Nawab of Nasuruddeen Khan, &c., and his Heirs and Successors, for the better Administration of the Government of the City of Surat and its Dependencies; dated 13th May 1800.

WHEREAS the Honourable East India Company have been subjected to a heavy expense for the protection of the City of Surat; and whereas the existing system of internal government in the said city has been found inadequate to the protection of the persons and property of the inhabitants; and whereas the Right Honourable the Earl of Mornington, Governor-general of the British Possessions in India, and the Nabob Nasur ud Dien, &c., are mutually desirous of providing more effectually for the external defence of the City of Surat, and for the security, ease, and happiness of the inhabitants; the following Articles

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of Agreement are concluded on behalf of the Honourable English Company and their successors, by the Honourable Jonathan Duncan, Governor of Bombay, vested with full powers for that purpose, by the said Governor-general, on the one part, and by the Nabob Nasuruddeen, and his heirs and successors, on the other part.

First. The friendship subsisting between the Honourable English Company and the Nabob Nasuruddeen Khan, &c., is hereby strengthened and confirmed, and the friends and enemies of one shall be considered to be the friends and the enemies of the other.

Second. The Nabob Nasuruddeen agrees that the management and collection of the revenues of the City of Surat, and of the territories, places, and other dependencies thereof, the administration of civil and criminal justice, and, generally, the whole civil and military government of the said city and its dependencies, shall be vested for ever entirely and exclusively in the Honourable English Company.

Third. It is agreed that the Nabob shall be treated on all occasions with the same respect and distinction as his predecessors.

Fourth. The English Company agree to pay to the Nabob Nasuruddeen and his heirs, out of the revenues of Surat and its dependencies, in four equal quarterly payments, one lac of rupees annually, which shall be considered to be the first charge payable from the said revenue. The Company also engage to pay to the said Nabob and his heirs, in addition to the lac of rupees, a proportion of one-fifth of the annual revenues now arising, or which may hereafter arise, from the said city and its dependencies, after deducting the said lac of rupees, the sums payable to the Mahrattas, and the charges of collection. The residue of the revenues, after the foregoing deductions, shall be at the disposal of the said Company.

Fifth. In order that the Nabob may at all times have full satisfaction in respect to the revenues of Surat and its dependencies, he, the said Nabob, shall be at liberty to inspect all the accounts thereof from time to time, or to station a vakeel or accountant, at his own expense, in all or in any of the offices of collection, for the purpose of taking and transmitting to his Excellency copies of all or any of the accounts of the said revenues.

Sixth. Courts shall be established for the due administration of civil and criminal justice, which courts, agreeably to the stipulations in the second article, shall be under the sole authority of the English East India Company. The said courts shall be composed of officers to be appointed by the Governor in Council of Bombay, for the time being, and shall be conducted according to such ordinances and regulations (framed with a due regard to the existing laws and usages of the country) as shall from time to time be published by the said Governor in Council.

Seventh. In complaints brought before the courts of justice, in which it shall appear, either by the application of the Nabob, or the representation of the defendant at or before the time of giving in his or her answer, or by the petition of the complainant, that both parties are relations or servants of the Nabob, it is agreed that such parties shall, in the first instance, be referred for justice to the Nabob, or to any person whom he may appoint to dispense it. Any complaint against the relations or immediate servants of the Nabob, by persons of a different description, shall, in the first instance, " be made to the " chief civil servant at Surat, who shall refer it to the Nabob, who hereby " engages to order an immediate investigation to be made; or, in case the " parties should desire it, to order the dispute to be referred to a proper arbi- " tration, the Nabob engaging to bring it to a direct issue, and to carry the " sentence or award, if unfavourable to his relation or servant, into immediate " execution."

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EXTRACT Bombay Political Consul., 7th September 1842.—No. 139 of 1843.

(No. 4,482.—Political Department.)

From *G. L. Elliott*, Esq., Agent for the Honourable the Governor at Surat, to *L. R. Reid*, Esq., Chief Secretary to Government, Bombay, dated 28th August 1842.

Sir,

IN reference to your letter of the 16th, and mine of the 22d instant, and in obedience to the instructions of the Honourable the Governor in Council, conveyed in the 4th para. of your communication, I do myself the honour to report the result of the investigation which I have instituted into the claims of different persons as heir to the late Nawab, and into the validity, according to the Mahomedan law, of their several pretensions to inherit the allowances enjoyed by his Excellency.

2. Doolun Begum, or Badshaw Begum, is one of his widows, and about 41 years of age; she is daughter to the great grandson of the late Nawab of Broach, and was married to his Excellency in the month of March 1816, an event which was communicated by the Chief of Surat to Government, in his letter of April the 29th, 1816, acknowledged by Mr. Chief Secretary Warden, on the 9th of the succeeding May.

This lady is entitled to an anna in each rupee.

3. His Excellency has left another widow, Mamuame, alias Umeer Ol Neesa Begum, respecting whom I have to speak now in detail, as there is some discordance in the evidence relating to her early history, on which her claim and that of her daughter to a participation in her late husband's allowances must very materially depend. In presence of the late Nawab's managers, I examined several persons whom I supposed to be well acquainted with the domestic transactions of the family, and from their evidence it appeared that this lady, when very young, fled by night from her home and relations, for reasons which were not stated, and was accidentally met by a Peon in the service of the late Nawab's father, who seized and delivered her into the hands of an eunuch named Sohel; that on the following morning this person brought her into the presence of the Nawab, who placed her on his son's establishment, as attendant on one of his concubines.

That the Nawab lately deceased eventually married her, but not until she had become the mother of three children, of whom one daughter is the sole survivor; her name will appear in the course of this statement, and she is the only direct heir left by his Excellency. His marriage with this Begum and with a dancing girl, Dulloo, were together celebrated on the 26th Molinrum Hyree 1241, corresponding with the 11th of September 1825.

4. Such is the tale of these witnesses (Goolam, on the establishment), which, if to be depended upon, would decidedly militate against the Begum's claim; but, thinking a more minute investigation highly necessary regarding a person who has always enjoyed the rank and shared the respect due to the principal lady on the establishment (the other widow, Doohun Begum, having been long separated from him), I could not rest satisfied without her own direct statement; with her sanction, therefore, I repaired to the palace, and, with every deference, demanded by her retired habits and peculiar circumstances, I obtained from her own lips the following history of her early life:—She belonged to the Rajpoot caste, and resided at Bownuggur. When about the age of 12 or 13, a stranger came there and purchased her. He conveyed her to the town of Randien, and afterwards to the residence of the old Nawab, father of his late Excellency. The latter informed his mother that a young girl had been to the palace, whom he wished to live with him. His proposal having been acceded to by her and his father, Nussooroodeen Khan, she was given into his keeping. She recollects having heard that the person who brought her in consideration of the purchase received 200 rupees and a pair of shawls. Three children were the offspring of this connexion, of whom one alone is now alive; namely, a daughter, Bukteearool Neesa Begum. After the bismulla of this child (four

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years, four months, four days subsequent to its birth) she was married to the Nawab, who passed to her a deed of emancipation.

5. In the Kagee's registry of marriages deposited in the superintendent's office, the following entry is recorded: "That the nuptials were celebrated "between Ufzooloodeen Khan Quotbool Dowlah Hushmut Jung Sahib, son of "the Nawab Nusseeroodeen Khan Sahib, son of the Nawab Meer Jufeezoodeen "Sahib, and Moosummatch Wuzeerool Nessa Utteeka (emancipated), by the "Nawab Wakeel, on the part of the woman Meer Essa, and witness "Meer Humroodeen, son of Meer Sumroodeen, and Hafeez Hamod Vulud "Mahomed Hossein. For a marriage present, 750 rupees and six precious "ornaments are given to her. Present, Shaik Zoobar and Moolon Khoob "Sahib."

6. The expression, "she was emancipated by the Nawab," is of the first importance. Its having taken place cannot be doubted, as it is unequivocally stated in an authentic register; and the word itself, "Utteekee," not only implies but clearly proves previous slavery, emancipation being an act of grace which cannot be extended to any but a slave. The record is therefore, in my opinion, a full corroboration of the truth and credibility of her statement; the difference in the name which is inserted by the Heizee as Weezeerool Neesa instead of Weemeerool Neessa Begum, must, I feel convinced, have arisen solely from mistake, and does not at all invalidate the correctness of her story, as the native agent, Ardekeseer Dunjee Shah, distinctly testifies that he was present at the above-mentioned marriage of identical woman.

7. No reason has, therefore, arisen for doubting the veracity of the Begum, while much suspicion attaches to the evidence of those who have related so improbable a story, and endeavoured to set aside her claims, and to whom I adverted in para. 3. It is true they are slaves on the establishment, but they are people of the lowest extraction, and have been at variance with Memmanee, who says she has many enemies in the zenana interested in disproving her being a purchased slave, as the overthrow of her rights would greatly benefit them, who are quite capable of suborning such persons, and bringing them forward as witnesses to falsehood.

8. Presuming, then, that the purchase of the Begum as a slave, and her consequent right to enjoy a share of her husband's allowances, is established, she is entitled to one anna in the rupee, the same as the other widow, Doolem Begum.

9. Bukhteearool Neesa Begum, the daughter of his late Excellency, to whom allusion is made in paras. 3 and 4, is about 21 years of age, and was born, as already stated, about four years previously to the marriage of her father and mother, Mummanee. She is married to Meer Jaffur Alli, son of Meer Surfray Alli.

10. The satisfactory testimony given to her mother's having been the purchased slave of the Nawab entitles this lady, according to the Mahomedan law, to inherit from her father's allowances at the rate of eight annas in a rupee; but her children may not, during her life, enjoy any share of the provision.

11. She has, however, dared to advance yet more lofty pretensions, having been persuaded that her husband is to inherit titles and dignities of the late Nawab. No sooner was his demise reported, than her father-in-law, Meer Surfray Alli, hastened to Surat, and is now residing in the palace with his son, in order to watch over the interests of his son and daughter-in-law. By his influence she has, I understand, been induced to address the Honourable the Governor on the subject of her husband's pretensions in a letter that was forwarded to Mr. Morris, secretary in the Persian Department, with Mr. Richardson's communication of the 19th instant.

12. Meer Jaffur Alli is not, however, entitled, by the Mahomedan law, to any share even of the Nawab's allowances; and it is difficult to understand on what argument he could possibly found his absurd and ambitious claims to the heritage of his title.

13. Two

13. Two concubines of the late Nawab, Ujub Bahur and Bung Bahar, are living in the establishment, but are entitled to no provision; they are, however, by the Mahomedan law, to be considered free from the date of his Excellency's decease. 2 May 1856.

14. Jegeer Begum, who was married to the late Nawab's brother, Meer Kehroodeen Khan, is, notwithstanding the connexion, excluded from any share of the money by the fact of her husband having died during the life of his father and mother.

15. Shah Zadee Begum, daughter of the above-mentioned Meer Kehroodeen Khan, and niece to the Nawab, is about 30 years old; she was the offspring of a concubine, and was betrothed by her uncle to Meer Moheemodeen Khan, the present Buckshee.

16. This lady, though so nearly related, is, by the Mahomedan law, prohibited from any share in the inheritance, her claim being superseded by those of Meer Moheenodeen Khan and Meer Kamroodeen Khan, male descendants of the uncle of the late Nawab's grandfather, who are yet alive.

17. The former of the above-mentioned persons, the present Buckshee, is grandson to Meer Nuzmoodeen Khan; the degree of relationship in which he stands to the late Nawab has been already specified. He is descended from the elder branch of the family; and the conviction of Government that this circumstance entitled him to their consideration may be deduced from the terms of a sanud, to which I would solicit the attention of the Governor in Council, and which was granted to Najmoodeen Khan Bhadoor Sufdurool Moolk. Its date is the 22d of June 1800, and it bears the signature of the Governor, Mr. Duncan, and the seal of the Honourable Company. From this document, of which a copy was transmitted to the Lieutenant-governor of this place, I extract the following declaration of the sentiments of Government: "It has become expe-
"dient to make a suitable provision for the said Nujmoodeen Khan Bahadoor
"and his family, who are near relatives to and descendants from the same
"paternal stock as the Nawabs of Surat."

18. The above-mentioned Meer Mohemoodeen Khan is entitled to $\frac{1}{8}$ and a half, or three annas in the rupee.

19. Meer Kumroodeen Khan, already named as the other descendant from the uncle of the Nawab's grandfather, is in like manner entitled to enjoy $\frac{1}{8}$ and a half, or three annas in the rupee.

He has, by a petition to Mr. Richardson, requested that his allowance may be defrayed from the Nawab's private property.

20. Should the several assignments now proposed, being the amount to which the several candidates appear to have a legal right, be approved by the Government, I respectfully suggest that the different incomes as specified below may be separately paid to the claimants directly from the Government Treasury.

ASSIGNMENT of 150,000 Rupees per Annum, to be shared by the Nawaub's Heirs, and received from the Government Treasury.

NAMES.	The Number of Annas in a Rupee each Person is entitled to receive by Mahomedan Law.	Per Month.	Per Year.
		Rs. *a.*	*Rs.*
Doolum Begum	1	781 4	9,375
Mumranee	1	781 4	9,375
Bukhteerarool Nessa Begum	8	6,250 –	75,000
Meer Moheemoodeen Khan	3	2,343 12	28,125
Meer Kamroodeen Khan	3	2,343 12	28,125
	1	12,500 –	150,000

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21. Although the four persons enumerated in the 13th, 14th, and 15th paras. are not, as I have stated, empowered by law to inherit any share of the Nawab's allowance, yet, I would observe with deference, that as they were supported by and solely dependent on him, justice, and perhaps respect for his memory, appear to require that we should make such provision for their support as the Government may think it expedient to assign them.

22. In reply to the 5th paragraph of your letter, requesting to know the effect of this event upon our mutual relationship, I have the honour to state that in my opinion the question appears to be settled beyond the possibility of a doubt. By the death of his Excellency, without a male descendant to his titles and immunities, the whole political connexion that existed between this authority and the British Government is necessarily dissolved, nor can any part of the treaty by which it was ratified remain in force, with the exception of that article which entitled his legal heirs, according to their degrees of kindred or connexion, to share the allowance hitherto enjoyed by him; and it may perhaps be necessary to pass an enactment repealing those regulations which relate to his Excellency the Nawab, viz., Regulation II, sec. 21, clause 2; clause 2, sec. 1, Regulation XI, 1827; Regulation XVII, sec. 29, clause 2, 1827; Regulation XXXIV, 1827. The necessity of this Act, however, must rest in the opinion of Government.

23. In reference to the concluding part of your 5th paragraph, I beg to reply, that point appears to be decided by the terms of the Committee's Report on the 24th August 1834, of which a copy was furnished to this department in your letter of 18th October 1832, No. 2,918 in the Territorial Department. In accordance with the spirit of this report, in which the various privileges enjoyed by the Nawab in virtue of his station are enumerated, they are now forfeited, and cannot be extended to any of his Excellency's heirs.

24. With respect to the Nawab's private property, I have the honour to inform the Government that it is at present entirely in the possession of Munwanee, whose name has already been mentioned as one of his widows. During my visit to the palace, I called on the other widow, Doolum Begum, in compliance with her own request; but on my begging to know what she wished to communicate, she said that there remained nothing to add to the representations she had on that morning made in a letter. In this epistle she had advanced several charges against Munmanee, who, as I have observed, retained all her husband's property, and who she averred was secreting the articles of highest value, thus defrauding her and other heirs. The letter proceeded to state the writer's apprehension that Munmanee might make an illegal use of her husband's seals, of which she had assumed possession from the Minister Meeza Mahomed Alli, by fabricating documents for her own advantage. As a precautionary measure, therefore, I have requested that his Excellency's seal of office and the public records be sealed, and placed under the charge of his widow Munman and his daughter, and that an inventory be taken of the property until Government may signify its wishes on the subject; but I have no reason to believe that the accusations against Munmanee have any foundation.

25. I have heard, by current report, that the Nawab has left debts to the amount of about 140,000; of this, however, I have no official information, nor has any creditor yet preferred a claim. He has left in houses, lands, furniture, &c., &c., an amount of private property which I should imagine would defray the incumbrance; but this is merely my own impression.

26. In these transactions I conclude the British Government will take no part, as I should very respectfully suggest that the same scrupulous delicacy which has always led us to abstain from all interference with his Excellency's domestic and pecuniary arrangements would actuate our present conduct towards his heirs, and forbid our taking any part in the disposal of his private property, the division of which and the liquidation of his debts do, in my view of the subject, devolve on his immediate heirs, together with the provision for the numerous inmates of the zenana. There are, however, many parties and strong family feuds in the palace which might lead to much difficulty and litigation in these arrangements; but the right, in order to prevent these evils, of assuming the direction of the affairs and procuring payment of the debts, and the expediency of such an interference, are questions which may perhaps hereafter form a subject for the consideration of the Honourable Board.

27. I

27. I beg to forward a genealogical table of the family of his Excellency the late Nawab of Surat. 2 May 1836.

28. I trust that I have now fulfilled the instructions of Government, having transmitted every detail I can collect relating to the points on which it wished to be informed; and I hope it will not be considered irrelevant if I here express my sincere regret for the event in which this duty has originated. The British Government has lost a faithful well-wisher and firm ally, although shorn of the power that might have made his loyalty of any avail; and the city of Surat will long have cause to lament the decease of one whose liberal hospitality and kindness of disposition were duly appreciated, and by whose departure the ancient line of her princes is become extinct.

I have, &c.
(signed) *G. L. Elliott*,
Agent for the Hon. the Governor, Surat.

Surat, Office of Agent for
the Honourable the Governor,
28 August 1842.

MINUTE by the Honourable the Governor.

1. IN continuation of my Minute, dated the 13th September last, I shall now proceed to record the result of my researches, made with the view of ascertaining,—1st. On what terms did the East India Company and the Nawab respectively acquire a footing in Surat, and what was the origin and nature of their connexion with one another. 2d. What were the terms of the treaty of 1759, and the measures proposed by this Government previous to the receipt of the letter from the Governor-general in Council, of the 10th March 1800. 3d. And I shall conclude with some observations as to how our past relations with the Nawabs of Surat bear on the question which we are now called upon to decide, namely, whether any person now in existence possesses an equitable right to succeed to the office and stipend of Nawab of Surat, and whether in the event of our deciding that the office of Nawab has become extinct by the demise of the late Nawab, the stipend of 150,000 rupees per annum should be continued to his family.

2. It is, I conceive, unnecessary to refer to the ancient history of Surat previous to the East India Company forming an establishment at that place; I shall therefore merely observe, that it was annexed* to the Mogul Empire about A. D. 1543, when Humaioum, son of the celebrated Baba, was Emperor of Delhi, from which date it was either, in reality or in name, a dependency of the empire, and included in the Joubah, or government of Ahmedabad.

* *Vide* paragraph 3, of a letter.

3. The first connexion of the East India Company with Surat appears to have occurred in A. D. 1611, when a fleet was sent out from England for the purpose of endeavouring to establish a commercial intercourse with the western coast of Asia. On the arrival of this fleet off Swalby, near Surat, it was attacked by a powerful Portuguese force. The Portuguese were repulsed, and the English in consequence obtained a favourable reception, and soon after the permission of the Emperor of Delhi to establish factories at Surat, Gogo, Cambay, and Ahmedabad. Under this authority they continued to trade without interruption until 1653, in which year a large Dutch fleet appeared off Swalby, and for a short time the trade was suspended. In the following year peace was concluded between the English and Dutch, on which trade was resumed, the affairs of the Company being at this time managed by a president and council residing at Surat.

This is derived from Mills' British India.

4. The East India Company do not appear to have acquired any political power at Surat until 1664, when by a fortunate circumstance it was thrown into their hands.

Mills' History, vol. 2, p. 84 and 87.

In 1664 the celebrated Seevajee, the founder of the Mahratta power, being at war with the Emperor of Delhi, attacked and partially plundered the city of Surat. The native inhabitants fled; but the English, retiring into their factory, made such a determined resistance that Seevajee was obliged to retreat after

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he had pillaged the town. The Emperor of Delhi, gatified with the English for the gallantry they had displayed in defeating his inveterate adversary, as a mark of his favour conferred upon them new privileges of trade.

In 1670 Seevajee made a second attack on Surat, and was again repulsed by the enemy, though not without considerable loss of life and property.

5. In 1662, the Island of Bombay had been ceded by Portugal to the Crown of England, as part of the dowry of the Infante Catherine, on her marriage with his Majesty Charles the Second. In 1668 this island was made over to the East India Company, under an agreement to pay 10*l.* annually to the King. The Company were at the same time vested with the requisite political powers for the defence and government of Bombay.

6. In 1683, Captain Keigwin, the officer in command at Bombay, being joined by the garrison and the great body of the inhabitants, rebelled against the Company, as represented by the President and Council at Surat, and issued a proclamation, declaring the island to belong to the Crown. The Council at Surat, having no means of compelling obedience, had recourse to negotiation, but without success. In 1685, on orders being received from England, the island was surrendered to the Council, under an amnesty to Captain Keigwan and his associates.

7. I notice the above events, because, with the view of preventing future opposition to their authority, the President in Council, in 1685–86, removed the seal of the Company's Government from Surat to Bombay, and in 1687 Bombay was raised to the dignity of a regency.

8. In 1687, Aurungzebe, the Emperor of Delhi, in retaliation against the Company for having commenced hostilities on some of his possessions on the eastern and western coasts of India, seized upon their factory at Surat, and issued orders for the expulsion of the English throughout his dominions. About the same time, Bombay was attacked by the Siddees (a remnant of whom retain possession of Nagheere at the present day), who took possession of the greater part of the island. The English, under these difficulties, were compelled to humble themselves, and, having made their submission to the Emperor, the Surat factory was restored, and the enemy finally expelled from Bombay.

9. I do not find any remarkable event connected with affairs at Surat recorded from this time until 1746, in which year Teigh Beg Khan, the Muttaseddy, or, as the office was afterwards called, the Nawab of Surat, died. He was succeeded by Sufder Khan, who placed his son, Vukhar Khan, in charge of the Castle of Surat. I am not informed whether this succession was sanctioned by the Emperor of Delhi. Very probably it was not, for at this time we learn from history* that the Mogul Empire, during the reign of the imbecile Ahmed (who ascended the throne of Delhi in 1747, and was dethroned in 1753), began greatly to decline, "the rich kingdom of Guzerat being divided between "the Mahrattas and a Patan tribe called Babbee."

* Dow's History, vol. 2, p. 326.

10. An adventurer of the name of Meea Altchen, or Mayen-ed-deen, who had married into the family of Teigh Beg Khan, being supported by the inhabitants of Surat, expelled Wukar Khan, and possessed himself of the castle. Shortly afterwards, he also succeeded in expelling Sufdur Khan from the town of Surat. He was, soon after, himself compelled to retire from Surat, but again recovered his authority.

During these unsettled times, Siden Ahmed had possessed himself of the Castle of Surat; but having made himself extremely unpopular by his tyranny and oppression, the East India Company were invited by the inhabitants to eject him, and themselves to assume the command of the castle and Mogul fleet. This invitation was not immediately accepted, under an apprehension that they would thereby become embroiled with the Mahrattas. In 1758, however, an outrage was committed on some Englishmen by some of the Siddee's people; and the latter having refused redress, war was declared against him, and the Company having coalesced with Meea Atchen, and having promised to secure to the latter the government of the town of Surat, the Siddee, feeling that he was unable to resist a force which had been sent from Bombay to co-operate with Meea Achen, surrendered the castle and fleet to the English on the 4th March

March 1759, and the following articles of agreement were entered into between them and their ally, Meea Atchen, alias Mayen-ed-deen: 2 May 1856.

"Agreeable to your desire I sent a person to you, by whom you advised me, "verbally, of your demands, and with sincerity of heart, I now write the par- "ticulars I can agree to, which are as follows:—

"Articles.	"Wrote by the Nabob of each Article.
Art. 1.—The Faris Khan shall be appointed to the office of Naib in its greatest extent, as in the time of Sufder Khan, and nobody but himself shall interfere in the said post.	Art. 1.—Agreeable to this article, I fully consent to Faris Khan's appointment.
Art. 2.—That whatever articles Faris Khan has given in writing or promised to the Honourable Company, the particulars of which cannot be drawn out at present, and must be deferred till we can meet, shall be fully complied with, without the least diminution.	Art. 2.—Whatever Faris Khan has wrote or promised to do for the Honourable Company, I will stand to without the least alteration.
Art. 3.—That the Mesha Gate shall be opened, our troops admitted, and we shall join our forces to drive our enemies out of the town.	Art. 3.—The Mecha Gate shall be opened, your troops admitted, and joined by mine, to drive out the enemy.
Art. 4.—The above articles a person on your behalf demanded, all which I agree to and will comply with, and the government shall be continued to me in full authority, and to the above I have put my own seal, and Meer Cootbodeen will sign and seal the same, after which you must send a counterpart of this writing with the Honourable Company's seal affixed."	Art. 4.—Agreed to, and that we shall act jointly in turning our enemies out of the town." (Wrote by Cootbodeen.) "Whatever the Honourable Company have demanded I agree to."

12. It would appear that the above agreement was entered into between Meea Atchen and the Company against a common enemy, without the authority or sanction of the Emperor of Delhi. The following representation was however, after its conclusion, made to Delhi by Mr. John Spencer, on behalf of the East India Company, wherein he takes credit for having rescued the city of Surat from the hands of the Siddee, and indirectly applies for the government of the castle and the fleet:

"That by virtue of Royal firmaunds of your Majesty's predecessors, the "English hitherto enjoyed favour at Surat, and carried on their business in a "reputable manner, till in these days that the Siddee, usurping an undue "authority in the town, used it to the ruin of the city in general, the lives and "properties of your Majesty's subjects being made light of by them; and they "even proceeded so far as to take money, the lives of our people, in direct "breach of your Majesty's firmaund, and in short, instead of being the pro- "tector of the place, became the oppressors of it to such a degree, that the "just orders of your Majesty were no way regarded in this city by their means; "and things were come to this pass, that though in consideration of the Tanka "the Siddee was to protect the bar, yet so far was he from doing that, that for "many months past a large fleet of Sancrajee punts, Ballagee Rows Nail, "entirely shut up the bar, as did a large land force by land, to the infinite "detriment of the place and inhabitants in general, without the Siddee's inter- "fering therein; and there was the greatest reason to believe that, unless some "speedy and vigorous measures had soon been pursued, your Majesty's famous "city of Surat, the only port of good Mussulmen to the tomb of your Prophet, "would have been brought to shame. In such circumstances, the eyes of the "whole town were cast on us as the only persons of force sufficient to save the

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" city from the calamities then felt, and was still further threatened with; " and in consequence of their solicitations to me, though our business in " in these parts of the world is only trade and merchandise, and we are not " desirous of taking or governing cities or countries, yet, as all the inhabitants " of this place, great and small, were earnestly desirous of it, and I saw it was " for the good of the place, I wrote to the General of Bombay on the subject, " in such manner that, at an immense expense, he sent hither, on our King's " ships, a great force of good and experienced men, with a large quantity of " artillery and other warlike stores of all sorts, with which I have had the hap- " piness to procure safety to the city, and ease to the inhabitants, and have " procured an entire currency to your Majesty's orders in the place. And your " Majesty's authority by all ways in our power will be preserved in the place " as it used to be, and you will consider the English as desirous of receiving " your orders, such being the intention of the Governor of Bombay and myself, " whose whole power will be used to maintain the castle that we have possessed " ourselves of for your Majesty, and to preserve the bar and sea open against " all opposers on your behalf; for we shall not apply the tanka you have " granted for this purpose to others, as has hitherto been the case; and since " having done this, the enemies that surrounded the place, both by sea and to " its great prejudice, have been removed. We are always ready for the safety " of the castle and the city, with its inhabitants, and therefore hope for your " Majesty's favour in behalf of the Honourable English Company, for whose " good services on this occasion I must refer your Majesty to the represen- " tation of the inhabitants of the place."

13. A similar letter was at the same time made to the Emperor's viziers. Letters were also addressed by the Governor of Bombay to the Emperor and his vizier; and, what was perhaps of greater weight, these were backed by a petition from the inhabitants of Surat, signed by the Nawab and the principal officers of the city. In consequence, the following perwanah, relating to the Castle and Tanka of Surat, was issued from Delhi:—

" Be peace and happiness with the renowned Mr. John Spencer, captain of " the factory in the city of Surat. By the hands of your vakeel your present " and arzee (or request) have been received, and the purport and particulars " thereof are understood, and your arzee (or request) to his Majesty has been " delivered. The pains you have taken and the success you have met with in " keeping open the door of Mecca, and delivering our subjects from oppression, " we are pleased and satisfied with. As to the firmaund for the purpose of the " castle, and sumund for the fleet, which are requested in the name of the " English Company, I have given your vakeel an answer, who will particularly " advise you thereof. Let the pish cush on this account be quickly remitted, " that it may be presented to his Majesty, and your request thereby granted. " In the meantime it behoves you to carry on affairs with alacrity, and be " assured that herein nothing on my part shall be wanting to countenance " you."

14. On the 24th June 1759 the following husbul hookum, addressed to Mr. Spencer, was issued under the great seal of the vizier to the Mogul, the nabob vizier, Ulma Mulek Nizam ul Muleck Behander; and on the same date a similar mandate was addressed to the Governor of Bombay, conferring on the East India Company the government of the castle and command of the fleet:—

" Be peace unto the high and renowned Mr. John Spencer. The courage " and conduct you have shown in his Majesty's service for the good of our sub- " jects, the inhabitants of Surat, are made known to his Majesty; and their " letter, expressing their satisfaction therewith, has also been shown, with which " his Majesty is well satisfied, and praises you. Therefore upon this account " he has been pleased to order this husbul hookum to be sent to you, that you " may take of his Majesty's castle, and take the preservation of the trade of " these seas particularly upon you, so that the inhabitants of Surat may carry " on their business and live in ease and quiet, and the ships and vessels going " to and coming from the most remarkable parts, as well as others, be in no " fear from rovers and pirates. The firmaund of the government of the castle " and perwanah for the fleet, being given in charge to the English Company,

" shall

" shall be sent to you from court on the first of the month of Fickat, and the " sixth year of the reign of his present Majesty; the 24th June 1759." 2 May 1856.

15. On the 4th September 1759 the above arrangement was completed by the grant of the following firmaund under the Great Mogul's seal, and undersealed by the vizier, placing the government of the Castle of Surat in the hands of the East India Company:—

Torah (or Verses) from the Koran, in Arabic.	The Great Seal of the King's Names, in Persian.

" Let the renowned among the people, the English Company, hope for his " Majesty's favour; and be it known to them, that in these happy and victorious " times his Majesty has been pleased, out of his great grace and favour, to " grant unto them the killedare (or government) of the Castle of Surat, on its " being taken from Mauphez Ahmed Khan. It is therefore requisite that they " should be very grateful for that his Majesty's favour, and look particularly to " the welfare of the castle, keeping proper order and discipline among the " troops, and having provisions, stores, and ammunition always in readiness, as " has been usual, which is strictly and especially required of them by his Ma- " jesty. Given on the 11th day of Maharin, and in the sixth year of his " Majesty's reign; or 4th September 1759."

16. This firmaund was accompanied by a husbulkookum from the vizier, as follows:

" May His Majesty's favour ever remain upon the brave and noble English " Company. It has pleased His Majesty to grant unto you the office of killedar " (governor of the castle) of the Bunder (port) of Surat, vacant by his dismis- " sion of Mauphez Ahured Khan, as also the office of daroga of the great fleet " of the said bunder, vacant by the dismission of the Seiddee Yacood Khan; " therefore, agreeable to his order, you are now directed to take particular care " of the proper execution of the above offices, by looking well to the welfare of " the castle, and preservation of the merchants, &c., on the high seas, keeping " them clear of pirates and rovers who may infest them. This is particularly " required of you."

17. On the 26th August 1759, a dustuck or order was issued under the seal of Techal Dowlut Fidandin Khan Behander Khansumaun, or steward to His Majesty, creating the company of the King's fleet as follows:

" The dustuck, in the name of the noble and renowned English Company, is " as follows:—By his Majesty's husbulkookum, the office of daroga of the great " fleet belonging to the Bundur of Surat, vacant by the dismission of Siddee " Yacood Khan, is now delivered into your charge; therefore it behoves you to " execute the said office with great care and circumspection, and carry on the " business of it justly, and with moderation. Look on this as absolutely " required of you. Dated the 2d day of Maharin, in the sixth year of His " Majesty's reign; 26th August 1759."

18. On the 18th September 1759, the following order, under the vizier's seal, was issued to Sciad* Moojwadeen Khan, governor of Surat, for the payment of the tunka or assignment of two lacks annually to the East India Company, to defray the expenses of the fleet:

* The same as Meed Atchen.

" To the brave, noble, renowned, and careful Sciad Moynadeen Khan " Behander, on whom is His Majesty's favour.—The vakeel of the English " Company having requested that, as the deroga or post of the great fleet " belonging to the Bundur of Surat, under the Soubah of Ahemedabad, on the " dismission of Siddee Yacood Khan, killedar of Dunde Rajahpore, from the " said port, had been granted to his constituents, he hoped that a perwaneeh " or order for the tunka on account of the troops of the fleet, as has been usual " since the time of him who is now in heaven (meaning Aurungzebe), among other " charges of Surat, exclusive of what is sent to court, might be given to him in " your name. From the archives of the kingdom it appears that this office was " in the hands of Siddee Yacood Khan, and that in the 23d year of the reign of " Mahomed Shah he procured an order on Teigh beg Khan, then governor of " Surat, for the annual payment of two lacks, according to custom, besides what

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" was sent to court. Now in these days the office of deroga of this fleet, on " the dismission of Liddee Yacood Khan, has been granted to the said Com- " pany, as has been usual under the dustuck or order of the khansaman (or " steward), and dated the 2d of Maharin, and sixth year of the present reign; " therefore I now write you, that you may pay unto them account charges for " the forces of the fleet, the usual of two lacks every year, agreeable to the " hereafter order among the other charges, exclusive of what is sent to court, " and that the accounts and papers relative thereto be transmitted hither."

Duplicates of all these documents appear to have been sent to Mr. Richard Boucher, at the time Governor of Bombay.

19. Simultaneously with these arrangements, a perwanah under the vizier's seal was issued, appointing Moynadeen Khan to act as governor of the City of Surat, and directing him to act as may be most conducive to the good of the city and his Majesty's affairs, " that everybody may follow their calling with- " out fear, and the city flourish." A hookum was also addressed to " all the " principal sciads, shaichs, and other wise and old men of understanding," as also to all the merchants and others our subjects inhabitants of Surat, requiring them to " assist and advise the governor, and with one accord to concur in " everything for the good of the place." Lastly, Moyna Leen's appointment was in like manner announced to Mr. Spencer, the chief at Surat, with an injunc- tion " to advise with and in conjunction with the above renowned (Moynadeen) " so to carry on matters as may be most conducive to the good of the place and " the honour of his Majesty, assisting one another."

20. The whole of these documents will be found in the printed collection of treaties between the East India Company and the States bordering on the Pre- sidency of Bombay.* They are very important, not only as placing beyond doubt the source from whence both our own nation as well as the Nawabs† of Surat derived their authority at Surat, and as proving that the office of Governor of Surat was not hereditary, but resumable at the pleasure of the Crown of Delhi.

* P. 19 to 27.

21. From the period of our obtaining the government of the castle and the command of the fleet, the influence and power of the Company at Surat greatly increased. From another perwanah, addressed to Mr. Spencer, we learn that " the Company were expected with a satisfied mind particularly to look to the " peace of the inhabitants, and the preservation of his Majesty's castle; to take " care that the trade of the seas is kept open and safe, that the hadjes or pil- " grims and merchants meet with no trouble or impediment, and that the ships " to and from the renowned and other ports may be safe from any fear of " violation from rovers and pirates." It appears from the following order, also addressed to Mr. Spencer, that the Court of Delhi began to look to the aid and influence of the Company to secure the remittance of its dues from Surat:

" High and renowned,—The tabod or sums usually remitted from Surat are " now much wanted at court, and his Majesty is pressing for them; as yet, what " money the renowned Moyna-deen Khan may have sent is not yet received; " therefore perwanah have been written to hasten him in that respect; but it " likewise behoves you to press him on this head, and procure the remittance " of the tobod by bills as soon as possible. Look upon this as absolutely " necessary."

22. Moynadeen Khan died at Surat on the 27th February 1763, which went, as reported, to the Bombay Government in a letter from the chief and council at Surat, dated‡ the 1st March 1763, from which the following is an extract:

‡ Bombay Secret Diary, 176 & 1763, p. 241, vol. 16.

" The twenty-seventh ultimo, Moynadeen Khan, the Nabob of this place, " departed this life. His eldest son, Meer Cutbooden, was somewhat appre- " hensive of trouble from the sepoys, but an answer the chief gave, in general " terms, in case it should be so, prevented, we believe, their attempting it, " which is all we have yet done, and everything at present remains quiet; but " as there are several competitors for the post, we apprehend, unless we have " your Honour in Council's orders to declare in favour of some one in par- " ticular,

† It is worthy of remark that at this time the title of Nawab had neither been conferred nor assumed.

" ticular, it is not improbable some disturbance will happen ; and if a reinforce- " ment of 150 of your military could be sent at the same time, it would add " such a weight as would most effectually prevent any opposition, should there " be any hardy enough to attempt it." 2 May 1856.

23. On the 3d March 1763, the chief at Surat, Mr. Hodges, addressed* the Governor of Bombay to the following effect :—" There are several competitors " for the nabobship of this town. The number is four, namely, Meer Cutboo- " deen, Pharis Khan, Ally Nowas Khan, and Noordy Ally Khan, each of whose " characters, according to the best information I can get, I take this method to " lay before your Honour for your observation and determination, as, which- " soever you choose for Nabob, I have little or no doubt we shall be able to fix " without much difficulty. The first,† then, is the eldest son to the late Nabob. " In capacity slender, in disposition rather timorous than enterprising ; humane, " and seemingly well disposed, but at present under bad influence, his principal " counsellors, being reckoned such by his friends as well as enemies, viz., " Coodjee Abdool Hossan Cossembeg, and Meer Amorodeen, which last rather " awes than advises, and which his post of buxy enables him to do, and whose " character is well known to be fiery and turbulent. The second‡ is a man " of capacity, but not less untoward than avaricious. The third§ I never saw, " but he is said to be a man of some capacity, tenacious of his word even to a " fault ; to have treated us very ill when he had power; suspected to be on good " terms with the Dutch through their broker Muncher, and no enemy to the " French, from the good understanding which even now subsists between him " and the French chief ; and as to the last|| he is at present the King's vacanvis, " allowed by most to be a man of capacity, and if one may judge of his never " having interfered in any of the many disputes that have happened during his " residence, he may be concluded to be peaceable. If your Honour should give " your preference to the first on account of his being already in the Durbar, " he must be required to discard by degrees, if not at once, his present ill " advisers ; to give the post of buxy to Meer Hussan Ally, another of his own " family, a man of prudence and well beloved by sepoys ; and to allow Pharis " Khan to exercise his office of Naib at the Durbar, in the full extent at first " agreed¶ upon, and as practised in Lafter Khan's time, and with which I have " reason to believe he will be satisfied. For removing the codjee there is a very " good plea, viz., a synod in favour of one Kumaldeen from court for that post, " and a quiet good sort of man he is. It may not be amiss here to add, that " Pharis Khan has at different times, when displeased at any treatment from " the late Nabob, suggested his desire to see this post in the hands of the Honour- " able Company ; but whatever may be his meaning towards them, there is " great reason to think such an attempt would meet with the warmest opposition " from the Mahometans in general, on account of their esteeming this port the " gate of Mecca, which therefore it is not reasonable to think they would easily " give up to those they call unbelievers, and if others of his persuasion are to " be credited, would be found so in fact ; not to mention the trouble it might " involve us in with Damagee and the Mahrattas, in case they disapproved it, as " they most probably would, on account of their immediate or distant interests, " nor the number of troops it would require to guard a place so extensive and " so indefensible as Surat is well known to be. Meer Cutboodeen having " acquainted me by message of his design to address your Honour, &c., by " this boat, the communication by land being stopped, is the cause of her not " going sooner, as, accordingly to their custom, he could engage in no business " before yesterday, and this morning his man accordingly brought me the " accompanying. Should your Honour think it necessary to lay this letter " before the Secret Committee or the whole Board, I have no manner of " objection."

* Diary for 1763, p. 157 and 158, vol. 40.

† Meer Cutbodeen.

‡ Pharis Khan.

§ Ally Nawas Khan.

|| Noordy Ally Khah.

¶ *Vide* Article I, of Treaty of 1759, para. 11 of this Minute.

24. These letters having been taken into consideration, the Bombay Government, on the 7th March 1763, recorded the following resolution :** " The " President desired this meeting to consider on the letter received yesterday " from the Chief at Surat, wherein acquaint us of the death of Mea Atchund, " late Nabob of that city, and request our orders in respect to the appointment " of a successor ; as unless we declare in favour of one of the competitors for " that post, it is probable some disturbances will arise, which being accordingly " taken into mature deliberation, and the President laying before us a letter

** Secret Diary for 1763, pages 154 and 155, vol. 40.

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" addressed to himself only by Mr. T. Hodges, setting forth the character of " the different competitors, we are of opinion, as well from this letter as from " our own general knowledge of the situation of that government, and the " respective persons mentioned, that Meer Cubboodeen is by much the most " suitable, and that his appointment will be most for our Honourable masters' " interests, in consequence of which the necessary directions must be sent to " the Chief and Council. But as the countenance of some force may be neces- " sary on the occasion, Resolved,—That our Honourable masters' ship 'Clive' be " ordered to proceed immediately to the bar with a detachment of 100 military " and 50 sepoys, which the Chief and Council must be directed to return as " soon as possible, sending down as much of the investments and as much " cotton as the 'Clive' may be able to take in. Mr. Hodges must likewise be " directed to write suitable letters to Delhi, to advise the death of Meea Atchund, " and that his son, Meer Cutboodeen, is the most agreeable to us as well as to " the inhabitants in general, to succeed him in the 'Nabobship.' "

* Secret Diary for 1763, pages 248 and 249.

25. Orders to the above effect were issued* by the Bombay Government to the Chief and Council at Surat, on the 9th March 1763, and that, pending the reference to Delhi, Meer Cutboodeen was to act as Nawab, " until the proper " commission can be obtained from Court." Our records do not show that this nomination was ever confirmed by the Emperor of Delhi. There is some reason to believe that it may not have been for Nawab Niramed-deen, who was placed by the Honourable Company on the musnud in 1790, denied that any nuzzur had been paid to or samuds granted by the Court of Delhi on the occasion of Cutboodeen's succession in 1763.

† Secret Diary for 1761 to 1763, p. 261, vol. 16.

26. On the 27th March 1763, the Chief and Council of Surat reported† that, as they did not apprehend any troubles on Cutbodeen's appointment, they had resolved to send back the troops which had been despatched from Bombay; but " Damajees Chouteah having within the last few days laid an impediment on " grain, and sundry other articles being brought to town on pretence of a right " to a quarter part of the sum of rupees 93,000, which the Dutch paid the late " Nabob in September last, with some other demands, little better grounded, " we judged it most advisable to detain the troops. Meer Cootboodeen had " pitched on this day for the ceremony of our placing him; but it being " esteemed improper by us on account of its being Sunday, it is deferred until " another of their lucky days fall out."

‡ Secret Diary, p. 266, vol. 16.

27. On the 13th April 1763, the following resolution‡ was passed by the Chief and Council at Surat, in regard to the installation of Cutbodeen into the office of Nawab of Surat: " The Chief acquaints the Board that Meer Cutbooden, the " Nabob's eldest son, has sent to acquaint him that to-morrow is a lucky day " for him to take charge of his father's post. Resolved, therefore, that he be " fixed in the Nabobship at what hour he may appoint, and that the detach- " ment lately arrived from Bombay under the command of Captain Lamont, be " ready at the Honourable Company's garden in the morning, to march in " company with us to the Durbar, the order of which the chief will direct, that " the whole may be conducted with that regularity an affair of such importance " in this place requires."

§ P. 271 to 274, of vol. 16.

28. As throwing additional light on the powers possessed or assumed by the Company at this period, I extract the following account of the installation of Cutbooden from the Surat Diary of the 14th April 1763§: " This forenoon " the Chief, accompanied by the gentlemen of council, Pharis Khan, the late " Nabob's naib or second jaffir; Yab Khan, collector-general; the principal " officers of the Government, and all the English gentlemen in the place, pro- " ceeded in the following order to the Durbar:

" An advanced guard of grenadier sepoys.

" A detachment of the King's and Company's troops, consisting of " 100 Europeans under the command of Captain Norman Lamont, of his " Majesty's 89th regiment.

" A rear-guard of grenadier sepoys.

" Pharus Cann, in a palanqueen, with about 250 sepoys.

" Jaffir Yab Cann, also in a palanqueen, with about 100 sepoys.

" Two state horses, with velvet coverings, embroidered with the " Honourable Company's arms, in their proper colours.

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" Two led horses, with the chief's own furniture.
" Three companies of sepoys.
" The chief in a palanqueen, with some grenadier sepoys on each side.
" A company of Bombay sepoys.
" The gentlemen of Council, and some others, in coaches, two and two."

" On the chief's arrival at the Durbar he was received by Meer Nooradeen, " the Nabob's brother, and Meer Amroodeen, his cousin, and Bury (or cap- " tain-general), and by them introduced to Meer Cutbooden, who, meeting " him at the door of the inner court, conducted him to the namua conna (or " dining-room), where, after the usual compliments had passed, they proceeded " across a courtyard, where Captain Lamont's detachment was drawn up to " the duan conna (a great audience-room), where Meer Cutboodeen being " vested by the chief as governor of the Mogul's castle, assisted by Pharis " Cann, with the Culgee (or feather of the Bird of Paradise set in a golden " locket), with a sprig set with diamonds, rubies, and emeralds in the shape of " a feather, with a large emerald pendant and surpoyick (or an ornament in " the shape of a common-sized rose), with a smaller one on each side, set with " diamonds, emeralds, and rubies, with a large emerald in the shape of a pear " pendant, the ensigns of office, the first fixed towards the back, and the other " in the front of his turban, was led by the chief to the seat of state, called the " Nabob's Turkea, having a large pillow as a support behind, and two smaller " on each side, immediately after which the Codjee repeated some prayers, and " then the Arrusbeggy, or master of requests, called out, ' Long live the Nabob " ' Meer Hoffis Deen Annut Cann Bahadur,' upon which the chief, as governor " of the Mogul's castle, ordered the nabut (or great drum) to be beat, and by " a signal caused nine guns to be fired from the castle, the number heretofore " given on such occasions, and which, as chief for the British nation, he " ordered to be taken up with the 21 guns from the saluting battery near our " garden, and then all the guns round the town were fired. The chief and " Pharis Cann, with the Council and the rest of the English gentlemen, and the " officers of government, then seated themselves on carpets, the chief on the " Nabob's right hand, Pharis Cann next to him, and then the Council and other " gentlemen, the Nabob's brother, and Buxy, &c. officers, being all seated on " his left hand; after they sat sometime, first for him to receive the compli- " ments of his officers and the principal merchants, they returned to the " naumo canna (the detachment commanded by Captain Lamont, beating a " march and saluting each time), which room, in compliment to us, was fur- " nished with chairs agreeable to the English taste, where the Nabob being " seated in a large chair of state, and the Chief of state and the Chief and " Council, with the other gentlemen that accompanied him, in the same order " as before, the Arrasbeggy came and repeated several complimentary verses in " honour of the Nabob, after which Pharis Cann, Jaffir Yab Cann, and some " other of the principal officers of the government were presented with sirpaws, " (viz., a coat, turband and cumberland), and each made his tuslem (or " homage) three times to the ground, whilst the Arrasbeggy and chupdars " cried out, ' Negow roash shim Nabob Nomehar salamut (or, May it please the " ' Nabob of great renown, and protected by the Most High, to favour him with " ' the light of his eyes).' The Nabob then presented the Chief with two Arab " horses, and Pharis Cann, Jaffir Yab Cann, and Vully Ullah, each with one, " and made sundry other genteel presents to the several gentlemen, civil and " military, as is usually practised on such occasions. The Chief was then " accompanied to the outer gate of the Durbar by the same persons that " received him there, and the whole returned in the same order to the " garden, except that the detachment, under the command of Captain " Lamont, marched off to the castle, on account of the excessive heat of the " weather."

29. In February 1777 the Nawab of Surat sent a message to the Chief, stating that with his concurrence he intended to receive a " visit from the Dutches " Directore, Monsieur Van de Graaf, and in reply was informed that the pro- " posed visit could not, under any circumstances, be allowed. The grounds of " the Chief's refusal were, that there was no precedent of any similar visit having " been permitted from the period that the East India Company came into the " possession of the Castle of Surat in 1759, and that if the Nawab were now

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" to be permitted to receive such visits, it might lead to an intercourse highly " prejudicial to the Company's interests at Surat. The Bombay Government " highly approved of the Chief's proceeding on this occasion."

30. About the same time, the Nawab, without any reference to the Chief, complied with an application made to him by the French Consul for permission to land at Surat some ordnance and military stores. On this coming to the Chief's knowledge, he prohibited their being landed, and intimated to the Nawab his surprise at permission having been granted without reference to him, such " being contrary to the form that had been observed since the " Honourable Company had been in possession of the castle, and to their pri- " vileges in that capacity." The Chief in Council caused these stores to be reshipped, and the Nawab was cautioned against hereafter granting any similar permission to the French, or any other foreign nations. These proceedings were also entirely approved * by the Bombay Government.

* Secret Diary for 1777, p. 73, vol. 21.

31. In 1777 the office of naib † to the Nawab of Surat was abolished, with the concurrence of the Government of Bombay, and the following is an extract from a letter dated the 10th July of that year, addressed ‡ to the Chief and Council at Surat, authorising the measure: " After full consideration of the " state of the Surat Government, the duties of a naib, and the revenues of the " Nabob, we are entirely of opinion that the office of naib is totally unnecessary " in a single city like Surat, and productive only of great expenses to the Nabob " and Company, without answering any good purpose; for these reasons we " have resolved not to appoint a successor to Ally Novas Khan, and to abolish " the office of naib. This resolution must be signified to the Nabob in a proper " manner; and as we know it will be highly agreeable to him, we shall expect " in return to be gratified in a point in which we have equally considered his " credit, and the welfare of the inhabitants of Surat; we mean the removal " from his confidence and councils, and from all offices and employments, of a " man named Heer or Heerojee, who is become deservedly obnoxious to the " people by the many oppressions and exactions he is guilty of, and which he is " enabled to commit under the sanction of the Nabob's name, by farming several " branches of revenues. The share we hold in the Government will not permit " us to pass over such practices without notice; therefore, when our determina- " tion respecting the office of naib is made known to the Nabob, you will at the " same time make him acquainted with our sentiments and expectations " respecting this Heerjee, in such a manner as you may think will be the least " disagreeable to him. We are persuaded that an English chief will be a much " better check upon the Nabob, and a better security to the subjects from " oppression, than any naib can possibly be." In reply, the Nabob expressed his gratitude for the relief afforded to him by the abolition of the office of naib, and complied with the demand for the removal from office of Herjee, forbidding his hereafter appearing at his durbar.

‡ Secret Diary for 1777, p. 140, vol. 21.

32. On the 5th of May 1789, the Governor-general of India in Council called upon the Bombay Government for a report of the real value, both in a political and pecuniary point of view, of the subordinate settlements belonging to the Bombay Presidency, and more particularly those of Surat, Fort Victoria, and Tellicherry. This information was furnished on the 27th October 1789 (*vide* Appendix), accompanied by the following suggestion§:

§ Secret Diary for 1789, p. 448, vol. 39.

" Before we conclude our observations respecting that possession (Surat), we " cannot avoid submitting to your Lordship's consideration, whether it might " not be practicable to secure to the Company, through the court of Delhi, the " reversion of the entire Government of the city of Surat, in the event of the " demise of the present Nabob, who is far advanced in life: we are of opinion " that if your Lordship succeed in such a negotiation, the English influence " will be exceedingly augmented, and the Company's revenues be increased " five lacs, that being the amount collected by the Nabob of Surat from the " latest, and, we believe, the most accurate account, their commerce extended, " and great abuses and disorders, which frequently now prevail, and which " it is difficult to remedy entirely, would be effectually prevented." I have been

† *Vide* Art. I. of the Treaty of 1759, alluded to in para. 11 of this Minute.

been unable to ascertain from our records whether this suggestion was ever noticed. 2 May 1856.

33. Nawab Meer Cutbooden died on the 11th March 1790, leaving two sons (both by concubines), named Meer Nizam-ul-Khan, aged 35 years, and Meer Nasser-ul-deen Khan, aged 30 years. On this intelligence reaching Government, a letter, dated the 25th March 1790, was addressed to the Governor-general in Council, proposing certain arrangements for the conduct of affairs at Surat, pending a decision by the King of Delhi, relative to the succession to the office of Nawab, from which the following is an extract:—"We "have submitted to his Lordship the Governor-general in Council, under date "the 27th October last, the eligibility of availing himself of the good under- "standing subsisting between his Lordship's Government and the court of "Delhi to obtain a sumnud from the King of the sole government of Surat, as "the means of obviating many inconveniences resulting from the complex "government hitherto subsisting in that city. It would therefore be obviously "improper to pronounce as yet in favour of any particular candidate for the "nabobship. But as it is absolutely necessary, for our intercourse with the "durbar, that some person in particular should be referred to, as the late "Nabob's eldest son is at present in charge of the government, and no opponent "has as yet preferred any pretensions, it appears to us advisable to instruct "the Chief and Council to consider the person at present in charge as the "representative, until we obtain, through the Governor-general, information "whom the King may appoint to succeed. And in submitting this matter to "his Lordship's consideration, we think it highly expedient to recommend, that "in the event of another Nabob being appointed, his Lordship may interpose "his influence to engage that the Mogul government may defray a reasonable "proportion of the charges our employers incur by maintaining a military and "marine force for the defence of Surat and its port."

34. In reply, this Government was informed*, on the 27th May 1790, that immediately on the receipt of their letter announcing the death of the Nabob of Surat, instructions were issued to Major Palmer, the Resident at the durbar of Mahlajee Scindia, on the subject. The Government of India further observed, "We have received a letter from Major Palmer in answer, enclosing a "copy of one written to him by Scindia, an extract of which we transmit here- "with, as far as the same is connected with the succession to the Nabob of "Surat. You will observe that no mention is made of Shah Allum's claim to "nizzeranah upon this event; but we expect it will be demanded on passing the sumnuds. The amount will, perhaps, not be considerable; but whatever it may be, the new Nabob will of course be required to pay it.

* Diary for 1790, p. 148 and 149, vol. 41.

35. The following is an extract from the instructions to Major Palmer:— "You will observe, in the letter now forwarded, that it is thought of conse- "quence to the interests of the Company that the office of Nabob should be "abolished, and a sumnud obtained from Shah Allum to invest the Company "with the entire government and revenues of the city of Surat and its depen- "dencies; or, if the present system of government should be continued, that "certain terms should be settled for the Company on appointing a suc- "cessor. I cannot, however, recommend that the sumnud should be applied "for in the name of the Company, because the late Nabob's eldest son appears "to have a claim to the office by right of inheritance; and I am likewise un- "willing to lay much stress on a sumnud from the King, as a formal acknow- "ledgment of its validity might be turned to the disadvantage of the Company "upon some other occasion. I should also dislike very much at this time to "ask a favour of Scindia, as it might raise expectation in him of obtaining some "return for it, which could not be granted. Should you, therefore, learn that "the appointment is to be given to the Nabob's eldest son, without burthening "him with any unreasonable stipulations, you will make no opposition to its "taking place; but should you discover it to be the intention of the Maharattas "either to take it directly or indirectly to themselves, or to procure it to be "given to any other person than the Nabob's eldest son, I desire that you will "interfere, and require that Scindia shall defer the final determination, on a "point in which the Company's interests are so materially concerned, until he "can communicate with and obtain the concurrence of this Government."

Diary for 1790, p. 142 and 150, vol. 41.

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36. The following was the reply* of Scindia to Major Palmer:—"I have "received and perfectly understood the contents of your letter, mentioning the "death of Cutboodeen, Hakim of Surat, and the Governor-general's wish to "bestow the office of Hakim of Surat on Nizam-ul-deen, son of the deceased, "together with a request that the sumnuds may be prepared in the name of "Nizam-ul-deen from his Majesty, for which you forward me a draft of the "petition. Conformable to your request, I have written to Shah Nizam-ul-"deen Ahmed relative to preparing the sumnuds and writing a royal shickha. "The firmaum will soon be ready. Be at ease, and knowing me anxious to "hear from you, make me happy by frequent friendly letters." Copies of these communications were forwarded to the chief of Surat on the 22d June 1790.

* Diary for 1790, p. 150 and 151, vol. 41.

37. On the 11th July 1790, Major Palmer informed the Governor-general that he had received an intimation from Scindia that a muzzeranah of 20,000 rupees would be expected from Meer Nizam-ul-deen Khan, in his receiving a sumnud from the Court of Delhi, acknowledging him as Nawab of Surat, in succession to his late father. This demand was made on the ground that a similar amount had been paid by Mecca Achum, on his being recognised as Nawab by the Court of Delhi in 1759. An intimation to the above effect was made on the 17th August 1790 to the Chief in Council at Surat, with instructions to communicate the demand to Meer Nizam-ul-deen Khan, and the expectation of Government that he would cheerfully comply with it. On the 7th September following, the Nawab addressed the Chief as follows: "I am by "you acquainted with what has been written from the presence to Bengal, and "understood it. In answer to which I write that my grandfather†, or father‡, "never required sumnud from the presence, nor ever promised or gave 20,000 "rupees nuzzeranah, which from my accounts, as well as from particular "inquiry of the old officers of Government, who from the first to this time are "well informed and now present, is clearly known; and I have before, and now "again acquaint you, it is a custom well known that when a royal sunnud is "received, tents are pitched in a garden without the walls, when it is read in "form, in the presence of the principal merchants, shroffs, and inhabitants; "after which the Governor comes into town in state, that every one may be "informed. This ceremony was not performed in the Nizamut of grandfather "or father, they not having a sunnud; notwithstanding all which, if the "English gentlemen, who are my benefactors, direct 20,000 rupees as a nuzur "for attaining a sunnud, their desire shall, in whatever manner it can, at once "be complied with. What more shall I say?"

† Mecca Achund.

‡ Meer Cutboodeen.

38. "The chief in Surat was informed in reply, on the 15th September 1790, "that the Governor-general in Council, having recognised the right of the "Court of Delhi to nuzerana, on his succession government both hoped and "expected that he would not hesitate in complying with the demand; and on "the 29th of the same month, the chief reported that Meer Nizam-ul-deen "had paid the amount into the Honourable Company's Treasury. In reporting "this payment, the Bombay Government suggested that measures might be "adopted to accelerate from Delhi the transmission of the sunnuds, although, "in reply, this Government was informed that Major Palmer had been "instructed on the subject. No sunnud having up to October 1791 (thirteen "months after payment of the nuzerana) been received from the Court of "Delhi, the Chief of Surat addressed the Government as follows: 'I do myself "'the honour to enclose an address from the eldest son of the late Nabob, "'that you may, if you think proper, represent the case to the Right Honour-"'able the Governor-general. I can inform you that his father was put on the "'musnud by the English Chief, Mr. Hodges, without waiting for any sun-"'nuds from Delhi. Scindia seems to be trifling in the business, and the "'Mogul is a mere pageant. Everybody will be satisfied if the present young "'Nabob be fixed in the Naibus by the Company. He therefore hopes, and I "'beg to recommend, that the Government of Bombay be ordered to put him "'on the Musnud in the usual form by the English chief.' The Nawab's "address was to the following effect: 'It is now 20 months since my father "'(may he be in Heaven!) departed this life, and it is also 13 months since I "'despatched a nuzzerana to the King. Before, when my grandfather (may "'his memory be respected!) quitted the world, Mr. Hodges, then Chief of "'Surat,

Secret Diary for 1790, p. 285, vol. 41.

Secret Diary for 1791, p. 825 and 826, vol. 42.

" ' Surat, after 40 days had elapsed, established my late father in the Nabob- 2 May 1856.
" ' ship, without waiting for sunnuds from Delhi, which never came to him
" ' during the whole of his reign, nor did he send any nuzzerana to the
" ' huzoor. Now that the succession is referred to Mhadjee Scindia, it will
" ' certainly be attended with much procrastination; and I am on this account
" ' induced to beg the favour of you to empower Mr. Griffith at once to settle
" ' me in the government, and not wait for sunnuds from the King, and, if you
" ' approve of it, to send for the nuzzerana back. It is absolutely necessary
" ' that the government should be again established according to ancient forms;
" ' but, situated as I am at present, the subjects do not respect me, my orders
" ' are not attended to, and even the better sort of people neglect me. I trust
" ' you will therefore take into your consideration the propriety of authorising
" ' Mr. Griffith to fix me ultimately in the Nabobship, and should the sunnuds
" ' afterwards arrive from Delhi, I will pay them all due respect.' "

39. " This correspondence having been forwarded to the Government of
" India, the Bombay Government was on the 22d September 1792 informed Diary for 1792,
" as follows: ' We have been informed by Major Palmer that the delay in p. 900 and 901,
" ' transmitting the sunnud of investiture upon the Nabob of Surat's succession vol. 44.
" ' to the musnud, has arisen from a demand of Scindia to some increase of the
" ' nuzzerana or fee beyond the amount which was paid on a similar occasion
" ' by the father of the present Nabob. It will rest with the Nabob himself to
" ' yield to this claim or not, as he may think proper; but we have resolved in
" ' either case not to admit of any further unnecessary delay in confirming him
" ' in his station, and therefore desire that you will be pleased to issue the
" ' necessary orders to the Chief of Surat to place the Nabob in the full pos-
" ' session of his office, waiting, however, two months after the receipt of this
" ' letter, in order to give Scindia full time, if he chooses it, for the transmis-
" ' sion of the King's sunnuds.' "

40. In conformity with these orders, the Chief in Council at Surat was, on the 7th December 1792, directed " on any day which may be most agreeable
" to the Nabob, after the 28th of December 1792, to place him in the full pos-
" session of his office, observing the same forms and ceremonies on the occasion,
" and treating him with the same marks of respect as were shown to his father.
" And with respect to the presents that are to be made, you are not to exceed
" the sum of 500 rupees to the durbar servants, when he is placed on the
" musnud, and 7,500 rupees on his first visit to the chief." The chief, in council, on the 30th December 1792, reported, that Meer Nizam-ul-deen had accordingly been installed on the musnud, under the same forms and ceremonies as had been observed on the accession of his father, Meer Cutboodeen, in 1763.

41. By a curious coincidence, on the 29th December 1792, the very day on which Meer Nizam-ul-deen was installed, Major Palmer addressed the following Diary for 1793,
letter to the chief at Surat: " Mahadjee Scindia having at length me that p. 51 and 52,
" he has petitioned his Majesty, Shah Allum, to pass the sunnuds for the vol. 45.
" Neabut of Surat, and agreed to accept the nuzzerana as first proposed by the
" Nabob, I think it necessary to give you previous information thereof, as the
" last instructions of the Right Honourable the Governor General in Council on
" this subject leave it entirely optional with the Nabob whether he will now
" accept the royal grants or decline them, and I shall act in conformity to his
" pleasure, on being made acquainted with it by you, when the sunnuds arrive,
" which I suppose will be in the course of a month or six weeks."

On the 24th of January 1793, the Chief informed Major Palmer, that having Ibid., vol. 45.
communicated with the Nabob, he had declared, that as it was entirely left for his option either to accept or decline the royal grants, he (the Nabob) " has
" thought proper to prefer the latter alternative, as he was put on the musnud
" by the English on the 29th of last month in the same manner as his father
" was, who never received any sunnuds from the Mogul; and the Nabob further
" expressed his desire to be dependent solely on the Honourable English East
" India Company."

42. No sunnud was, in consequence, ever received from Scindia, or the Court of Delhi. In fact, the supremacy of the Emperors of Delhi over the Nabob of

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Surat had for many years previously been merely nominal; it was now formally renounced, and the power of the Emperor was too weak to assert what was originally his undoubted prerogative. On the other hand, the supremacy of the English Company originating in their having obtained the killedaree (commandantship) of the Castle of Surat, and command of the Mogul fleet, increased year by year. The Nabob, throwing off his allegiance to the Court of Delhi, voluntarily transfers it to the East India Company; but besides this, we now stand in the same relation to Surat as the Emperor formerly did, in virtue of his having become, in the course of political events in India, merely a titular monarch, divested of all power, and a pensioner on the British Government. We therefore possess a double right in the present instance, first by the assent of the Nabob of 1793, and second, as successors to the powers and prerogatives of the Emperor of Delhi, to decide on the questions which arise in consequence of the demise of the late Nawab of Surat.

43. On the 4th March 1796, the Chief in Council at Surat was called upon to submit to Government a statement of what his judicial powers consisted, of the cognizance of what points his jurisdiction embraced, and whether any record was kept of his proceedings and decisions; it being explained that Government had in view to adopt "such further regulations as might appear "most conducive to the promotion of public justice and the regular and dignified "exercise of the authority of the Company's government at Surat, in all the "points in which it was by treaty entitled, or well-established precedent, to "interpose." The reply of the Chief (Mr. Seton) to this reference is annexed as Appendix (A.) to this Minute.

44. From this document it appears that the judicial powers exercised by the Chief in Council were very considerable, and Mr. Seton quotes the following instructions from the Honourable Court of Directors, dated the 6th March 1795:—

"The Honourable Company's protection, in virtue of their being possessors "of the Castle of Surat, is to be afforded equally to all the inhabitants of that "city. In all cases of complaint not of material importance, some of which "we understand almost daily happens, or in matters wherein redress can be "immediately given, the Chief is of himself to act as to him may appear proper "in the manner heretofore customary. In all cases that may appear to require "it, he is to consult his Council, for you are to observe that the controlling "power on every occasion is to rest with the Chief in Council."

45. The expenses incurred by the Company in consequence of its connexion with Surat, having greatly exceeded their receipts, the Nabob was, with considerable difficulty, and after a protracted negotiation, induced, in the year 1798, to consent to the following* treaty or agreement being substituted for the one concluded with Meer Achmed in 1759:

* Bombay Diary for 1798, p. 4185 to 4187, vol. 66, A.

"1st. That the treaty made by the late Mr. Spencer with the Nabob Moyen "Deer Khan in the year 1759, stipulated that the government of this city shall "be secured to the children of the said Nabob, from generation to generation, "and that we should join our forces against our mutual enemies, and defeat "them; and the castle with its revenue, and the armed vessels as taken from "the Seedees, should be put in the hands of the Honourable Company, and "for the future the absolute government of the city should be in the hands of "the Nabob, should continue in full force and virtue.

"2d. That not any of the gentlemen in the Honourable Company's service "shall hold any intercourse, private or public, with any of his Highness's officers, "mutsuddes, &c.; all the Company's bahadur's business to be communicated "and managed between the Nabob and the chief.

"3d. That some of his Highness's officers, &c., have made encroachments and "embezzlements of his sircar, and they bear suspicious characters; therefore "his Highness proposes to settle accounts with them, and make necessary ar-"rangements, for which the chief shall afford his ample and zealous support to "the Nabob.

"4th. That the Nabob engages to support his usual body of sepoys, and "to keep them in good order.

"5th. That

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" 5th. That the chief shall refer all petitions and complaints, whatever they " may be, from his subjects to the Nabob, to be decided upon agreeably to the " laws of the country, conformably to the usage of the respective castes, with " equity and justice. All punchayetts, when necessary, to be held at the durbar, " and nowhere else; and the Nabob shall report the progress on all such petitions " and complaints to the chief.

" 6th. That his Highness the Nabob, after consulting the chief, Mr. Seton, " and being sensible of his good advice, and friendship of many years' duration, " to his father and himself, and relying on a continuance thereof, his Highness " is pleased to grant to the Honourable Company one lack of rupees per " annum, in perpetuity, to assist the expense they incur for the support of the " castle and city, to be paid in quarterly payments; but as his present revenue " does not afford this additional annual charge, he may be allowed, in a moderate " degree, to increase such mocants as can bear it, but no increase on the " necessaries of life is to be put, or no alteration in the mocants to be made " without the consent of the chief; the Honourable Company being guarantee " for the Mahrattas not claiming an equal or similar payment.

" 7th. That the counterpart of this agreement be signed, sealed, and ex- " changed by the agreeing parties aforesaid, the Nabob and the chief of " Surat."

46. This treaty, however, was never brought to a final conclusion and ratified. The negotiation was interrupted by the death of the Nabob Meer Nizam-ul-deen, on the 8th January * 1799, leaving a son by a concubine two months old, named Cutbo-deen, and a brother, aged 40, named Meer Nassir-ul-deen. The latter, on the day following his brother's death, addressed † a letter to Government, requesting that he might be recognised as heir to the musnud. On intelligence reaching Bombay of the Nabob's death, the chief at Surat was directed to adopt ‡ precautionary measures for the security of his infant son, and to report what persons he thought it would be desirable to appoint as his guardians during his minority, in the event of its being determined that he should succeed to the musnud on the 4th February 1799; however, the chief at Surat reported the death of the infant on the morning of that day.

* Diary for 1799, p. 201 and 237, vol. 72.

† Ibid., p. 239.

‡ Diary for 1799, p. 670 to 673, vol. 73.

47. Meer Nasseer-ul-deen now renewed his application to succeed his brother in a more lofty tone, and until experience had convinced him how entirely dependent he was on the favour of the Honourable Company in regard to the succession, demanded, as a right, what was afterwards conceded, with certain limitations, as a boon. In the first instance, the musnud was offered to him on condition of his ratifying the treaty alluded to in the 45th paragraph of my minute, to which the late nabob had assented a short time before his death, and on his agreeing, also, to the introduction of certain reforms in the administration of affairs at Surat, and consenting to the re-establishment of the office of naib, stipulated for in the original treaty with Meea Achmid in 1759, but which, with our consent, had been abolished in 1777. To these conditions Meer Nassir-ul-deen declined to assent, on the plea of inability; but, as I shall now proceed to show, he was afterwards compelled to agree to terms far less favourable to those he had rejected when finally recognised as Nabob of Surat.

48. A reference having been made to the Governor-general of India for instructions in regard to extent of reforms which should be introduced at Surat, and the conditions on which Meer Nassir-ul-deen should be permitted to succeed, his Lordship § in Council furnished this Government with the necessary orders on these points, in a letter dated the 10th March 1800. I annex to this Minute, as Appendices (B.) and (C.), the letter from this Government, dated the 6th November 1798 and 16th April 1799, as containing much valuable information respecting the past history of Surat, and the ancient relations which subsisted between the nabobs of Surat and the Honourable Company.

§ The Earl of Mornington.

49. The instructions of the Governor-general of India, dated the 10th March 1800, will be found in Appendix (D.) to this Minute, and were based chiefly on the under-mentioned principles:

1st. That the terms of the treaty concluded with Moyer-deen Khan alias Meer Achmid, in 1759, the powers which devolved to the Company as governors of the castle and commanders of the fleet at Surat, as detailed in the state-

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ments* of Mr. Erskine, and in the minute of Mr. Seton, dated the 15th March 1796, the reservation to the Company by that treaty of the appointment of Naib to the government of the city, vested with all the powers exercised by that officer during the administration of Jufder Khan, the investigation instituted into every branch of the government of the city under the orders of the Honourable Court of Directors of the year 1761, founded on the rights which the Company had acquired, with the arrangements made in consequence of that investigation, and the participation of the Company in the revenues, precluded all doubt of the original right of the Company to exercise a joint control with the nabob Meea Achmid over every branch of the administration of the city.

* *Vide* Appendices (A.)and (E.) to this Minute.

2d. That whatever doubts might have arisen as to the exact limits of the authorities of the Company and the Nabob Meea Achmid, all questions on that subject necessarily ceased on the demise of the Nabob.

3d. That the treaty concluded in 1759 with Meea Achmid was only a personal engagement with that nabob, and did not extend to his heirs, and that, independent of the terms of that treaty, the discussions which had passed in 1763, on the death of Meea Achmid, as well as the letter from this Government to the Governor-general in Council, dated the 25th March 1790, when the office of nabob had again become vacant by the death of Cutboo-deen, proved it to have been the general sense that the operation of the treaty of 1759 had ceased on the demise of Meea Achmid in 1763.

4th. That the power of the Mogul over Surat having also become in fact extinct, as evinced* by the result of the application made in 1791 and 1793 for his sanction to the succession of Meer Nizam-ul-deen, it followed, that the Company, not being restricted with respect to the disposal of the office of nabob by any specific treaty, were at liberty to dispose of it as they might think proper, and that this right of disposing of the office of nabob was accompanied by an indispensable duty of providing a just, wise and efficient administration for the affairs of Surat, the lapse of the powers of government having left no other party, excepting the Honourable Company, in a state to protect the persons and properties of the inhabitants of that city.

5th. That the late Nabob Meer Nizam-ud-deen and his father Cut-boo-deen must, under the circumstances above mentioned, be considered to have succeeded to the office of nabob, not in virtue of the treaty of 1759, concluded with Meea Achmid, but through the favour and friendship of the British Government extended to them in consideration of the connexion which subsisted between their ancestor Meea Achmid and the Honourable Company, and that the same equitable principle would guide the determination of the Governor-general in Council respecting the succession on the present occasion (1800), but with such limitations as the safety and good government of the city of Surat demanded.

50. After laying down this basis, it was observed that the defenceless state of Surat had, for many years past, afforded the most serious grounds for apprehension, and that a variety of additional considerations, arising out of recent events, rendered the placing the city in a respectable state of defence, an object of the greatest importance to the British interests, and that the frauds, exactions and mismanagement in the collection of the revenue, the avowed corruption in the administration of justice, and the entire inefficiency of the police, as manifested in the different tumults which had occurred in the city, and particularly the riot of 1793, afforded abundant evidence that the nabobs were as incompetent to conduct the internal government of the city, as to provide for its external defence. "It is obvious, therefore, that these important "objects can only be attained by the Company's taking the entire civil and "military government of the city into their own hands, and consequently it is "their duty, as well as their right, to have recourse to that measure. You will "explain the grounds of this determination to Nassir-ul-deen, and deliver to "him the enclosed Articles of Agreement, his acquiescence in which must "constitute the condition of his being allowed to succeed to the office of nabob. "We have fixed the amount of the provision to be made for the nabob, on the "estimate

* Meaning that a sunnud, although promised for nearly three years by the Court of Delhi, on the accession of Meer Nizam-ul-Deen in 1792, was never received, and that the nabob was finally installed by the British Government, independent of the Mogul Government.

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"estimate* of the revenues and the expenses of the late Nabob, as furnished "by Mr. Ramsay; it must be clearly explained to the Nabob, that he is to "provide, from the share of the revenues allotted to him by the Articles of "Agreement, a suitable maintenance for the families of his predecessors, and "that he is not to be entitled to any portion of the labour of artificers or other "persons in the city, or to any pecuniary advantages or rights whatever, "excepting such as are expressly reserved to him. If Nasseer-ul-deen shall "ratify these articles, you will place him in the station of the Nawab; if he "shall refuse his acquiescence, you will withhold your sanction to his succession; "assuming, however, the entire administration of the government of the city, "and of its revenues, in the same manner as if Nassir-ud-deen had ratified the "Articles of Agreement. It will be proper to make a suitable provision for "Ameer-ud-deen Bukshee Zaffer Yaab Khan, and any other officers of the late "Nabob, whose situation and means of subsistence may be affected by the reform "of the government. This provision should, in general, be made in money, "but we shall have no objection to your substituting land in cases in which you "may deem it advisable. The notification of these provisions to the persons "to whom they may be granted, should precede the declaration of the assump-"tion of the government."

* This amounted to between five and six lacs annually.

51. The treaty dictated by the Government of India was as follows. By it all the powers of the native government of Surat were vested in the Honourable Company, Meer Nassir-ud-deen receiving the title of Nabob, with an annual stipend of one lac of rupees per annum, and one-fifth of the surplus net revenue:

"Articles of Agreement between the Honourable East India Company and "their Successors, and the Nabob Nasseer-ud-deen Khan, &c., and his "Heirs and Successors, for the better Administration of the Government "of the City of Surat and its Dependencies.

"Whereas the Honourable East India Company have been subjected to a "heavy expense for the protection of the City of Surat; and whereas the "existing system of internal government in the said city has been found "inadequate to the protection of the personal property of the inhabitants; and "whereas the Right honourable the Earl of Mornington, Governor-general of "the British possessions in India, and the Nabob Nasseer-ud-deen, &c., are "mutually desirous of providing more effectually for the external defence of "the City of Surat, and for the security, ease and happiness of the inhabitants, "the following Articles of Agreement are concluded on behalf of the Honourable "English Company and their successors by the Honourable Jonathan Duncan, "Governor of Bombay, vested with full powers for that purpose by the said "Governor-general, on the one part, and by the Nabob Nasseer-ud-deen and "his heirs and successors on the other part:"

Article I. "The friendship subsisting between the Honourable English "Company and the Nabob Nasseer-ud-deen Khan, &c., is hereby strengthened "and confirmed; and the friends and enemies of one shall be considered to be "the friends and the enemies of the other."

Article II. "The Nabob Nasseer-ud-deen agrees that the management and "collection of the revenues of the City of Surat, and of the territories, places "and other dependencies thereof, the administration of civil and criminal "justice, and generally the whole civil and military government of the said "city and its dependencies shall be vested for ever, entirely and exclusively in "the Honourable English Company."

Article III. "It is agreed that the Nabob shall be treated on all occasions "with the same respect and distinction as his predecessors."

Article IV. "The English Company agree to pay to the Nabob Nasseer-ud-"deen and his heirs, out of the revenues of Surat and its dependencies, in four "equal quarterly payments, one lac of rupees annually, which shall be con-"sidered to be the first charge payable from the said revenues. The Company "also engage to pay to the said Nawab and his heirs, in addition to the above-"mentioned lac of rupees, a proportion of one-fifth of the annual revenues now "arising, or which may hereafter arise, from the said city and its dependencies, "after deducting the said lac of rupees, the sums payable to the Mahrattas and "the charges of collection. The residue of the revenues, after the foregoing "deductions, shall be at the disposal of the said Company."

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Article V. "In order that the Nabob may at all times have full satisfaction in "respect to the revenues of Surat and its dependencies, he, the said Nawab, "shall be at liberty to inspect the accounts thereof from time to time, or to "station a vakeel or accountant, at his own expense, in all or any of the offices "of collection, for the purpose of taking and transmitting to his Excellency "copies of all or any of the accounts of the said revenues."

Article VI. "Courts shall be established for the due administration of civil "and criminal justice, which courts, agreeably to the stipulations in the said "Article, shall be under the sole authority of the English East India Company. "The said courts shall be composed of officers, to be appointed by the Governor "in Council of Bombay for the time being, and shall be conducted according "to such ordinances and regulations (framed with a due regard to the existing "laws and usages of the country) as shall from time to time be published by "the said Governor in Council."

Article VII. "In complaints brought before the courts of justice, in which it "shall appear either by the application of the Nawab or the representation of "the dependant at or before the time of giving in his or her answer, or by the "petition of the complainants, that both parties are relations or servants of the "Nawab, it is agreed that such parties shall in the first instance be referred "for justice to the Nawab, or to any person he may appoint to dispense it, "Any complaint against the relations or immediate servants of the Nawab by "persons of a different description shall, in the first instance, be made to the "chief civil servant at Surat, who shall refer it to the Nawab, who hereby "engages to such an immediate investigation to be made, or in case the parties "should desire it, to order the dispute to be referred to a proper arbitration, "the Nawab engaging to bring it to a direct issue, and to carry the sen-"tence, or award, if unfavourable to his relation or servant, into immediate "execution."

52. To carry out these instructions, the Honourable Mr. Duncan, then Governor of Bombay, proceeded in person to Surat, where he arrived on the 2d May 1800. Mr. Duncan has left on record a long and elaborate minute of his proceedings at Surat, dated the 25th July 1800, from which we learn the following particulars: On the 6th of May the Governor delivered to Nasseer-ud-deen a letter, dated the 29th March 1800, from the Governor-general of India, in reply to one addressed to his Lordship on the 17th November 1799* by the Meer, in which he had assumed the title of Muttseeddy: "I observe," says the Governor-general, "your moonshees have erroneously inserted in your "letter the title of Muttseeddy. I shall be very happy to acknowledge that title, "and all the rights which appertain to it, when you shall have entered into the "necessary previous engagements with Mr. Duncan, the Governor of Bombay, "and when you shall have been seated on the musnud, after the manner of "your predecessors, by the British authority; but until that time, you must be "sensible that the adoption of that title was permature and improper."

* Diary for 1800, p. 4412 & 4413, vol 96.

53. The draft of the treaty was delivered to Nasseer-ud-deen on the 9th May; and on the 12th, his minister, Kussuram Melita, and the bukshy delivered Nusseer-ud-deen's answer, declaring that he could not accept it; "not only "from the sense of personal degradation, but from the odium he must thence "incur from all the body of Mussulmans, who, considering Surat as the door of "Mecca, could not desire to see it altogether in the hands of those of another "religion." The Nabob's acceptance of the treaty was nevertheless signified on the same day, the minister explaining that "Nusseer-ud-deen had stated that "it was merely the odium he might incur with those of his own religious faith "that had made him appear to decline the acceptance of the treaty." The treaty having been drawn out and attested by the usual officers of state was delivered to Mr. Duncan by the Nawaub in person on the 13th of May, when a counterpart was executed by the Governor. It will be found at page 90 of the printed collection of Treaties between the East India Company and the States bordering on the Presidency of Bombay, and is *verbatim* the same as the agreement received from the Governor-general of India, and recited in full in paragraph 51 of this Minute. The Nabab Nusseer-ud-deen was seated by Mr. Duncan on the musnud on the 14th May 1800, under the usual forms and ceremonies, and on the following day the civil and military government of Surat and its dependencies

dependencies was assumed by the Honourable Company under a proclamation, a copy of which is annexed to this Minute as Appendix (G.) 2 May 1856.

54. The following extract from Mr. Duncan's Minute explains the nature of the provision which was assigned for the support of the bukshy, and the terms on which the grant was made. It is necessary to notice this the more particularly, because the present bukshy is one of the candidates to succeed the late Nabob: "It became next necessary to make an adequate provision for "Nizam-ud-deen, the bukshy, in pursuance of the instructions to that effect "in the 21st paragraph of the letter from the Governor-general. It appears "that the bukshy's income had hitherto consisted in a salary that he had "enjoyed in that capacity from the Nabob, in the profits of several mehals and "farms entrusted to his management, and from the considerable advantages "arising out of that of the administration of justice that fell to his share, all "of which may be admitted to have, according to his own account thereof, "brought him in half a lac of rupees per annum, and he has himself asserted "that the usual rate of his annual expense is well known to have exceeded "that amount. Besides these official advantages, the bukshy had for many "years past been in the possession of various jagheers that his relations, the "Nabobs of Surat, at different times, but all above 20 years ago, alienated in "his favour, from various parts of the moghullye, or assigned revenues in the "neighbouring purgunnahs for the support of the Nawabship, in like manner "as they have (as far as depended on them) done to various other individuals. "These estates or assignments, which the bukshy appeared to be very desirous "of retaining, amount yearly, according to the valuation expressed in the "perwannahs or grants, to 16,810 rupees, respecting which the present Nawab "declared, on being separately consulted, that he considered them as having, "from the original grants and the length of possession, become the bukshy's "property. On all which grounds, and the others detailed under the dates of "my separate diary, referred to in the margin,* I have settled that, including "the said jagheers, the bukshy shall receive from the Company an annual stipend "of 30,000 rupees, to be continued to his children and families after his decease, "at the reduced rate of 24,000, with a clause inserted in the grant, that in the "event of its becoming expedient for Government to resume the jagheers, the "parties shall be satisfied to receive their valued produce from the treasury, in "like manner with the residue of their pension."

* 18, 19 and 22 June 1800.

55. Previous to his departure from Surat, and after the treaty had been executed, Mr. Duncan, as an act of favour, conferred on the Nawab's eldest son, Afzul-ed-deen, the office of waha negane. This office, of the value of about 1,200 rupees per annum, had been claimed by Meerza-onda deen Khan, the son of the late Nawab of Broach, Mongei Khan, who, in prosecution thereof, proceeded to England, and returned with a letter from the Honourable Court of Directors, dated 30th May 1794, directing that his claim might be investigated. In consequence, Mr. Griffiths, then chief at Surat, reported upon the claim on the 31st of December 1794; and after referring to the Nuwab, stated the claim to be inadmissible. On this occasion, the following hookum nameh, issued by the Court of Directors, was produced:

"The King is pleased to order that Nusseer-ud-deen Khan be altered to the "bukshy gane of the office of vaky negaree, in Surat, upon the removal of "Fuzzul Ali Khan, and that he act agreeably to the tenor of this royal man- "date with the dignity of one hazaree zant and 200 horsemen. Dated the 1st of "the month Rujub, in the 15th year of the coronation.

11th of the month of Rujub, in the year 15, this seal was put.

Viduel Shaku alum Badshahee Ghazi Bukshee ul Mulh Tulfican ul Dowlah Meerza Mudjuf Khan Bhaden Ghabeb Jung.

1st of the month of Rujub, in the year 15, copy of this was registered in the book of Bukshee ul Mulk.

56. In the course of this investigation it was clearly shown that the office of vaky negaree was not hereditary, but dependent on the pleasure of the Crown of Delhi. In answering his opponent, in 1794, the Nawab on one occasion stated, "It is the prerogative of the Emperors only to dispose of offices immediately "belonging to themselves from father to son, not the option of inferior governors;

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" therefore this claim cannot be established." On another occasion, he still more explicitly declared, " The vaky nagnaree is an office at the disposal of the " King, and not the right of inheritance. By a firman, under the seal of " Nujut Khan Bahder, my brother, Meer Nusseerul deen Khan holds that " office." These are very important admissions; for as the office was not confirmed to the Nawab and his heirs by the treaty of 1800, it is clearly within our power now to do with it as we please; and as the office is paid by various perquisites vexatious to the inhabitants of Surat, I shall have no hesitation in proposing that we avail ourselves of the present opportunity to abolish it.

57. The Nawab Meer Nassir-ud-deen died on the 23d September 1821, leaving a widow and a son, named Meer Afzul-ul-deen, then in the 40th year of his age. On this event, the Honourable Mr. Elphinstone, then Governor of Bombay, addressed a letter of condolence to Meer Afzul-ul-deen, requesting him to administer the office of Nawab as by established practice; but, at the same time, informed him that his formal appointment to that office must be issued by the Governor-general. In reporting the death of the Nawab to the Government of India, it was observed, that although the Treaty of 1800 appeared to entitle Meer Afzul-ed-deen to succeed to the musnud as a matter of course, yet it had been judged proper by this Government to render the formal investiture of the late Nawab's son dependent on the sanction of the Governor-general. In reply, this Government was informed, in a letter* from Mr. Secretary Swinton, dated the 31st October 1821, that the Government of India sanctioned Meer Afzul-ed-deen's investiture with the usual forms and ceremonies. These instructions having been communicated to the Chief of Surat, that office, on the 29th November 1821, reported, that Meer Afzul-ul-deen having fixed on that day for the ceremony, he had been duly installed in the office of Nawab of Surat.

* Pol. Compilation for 1820/21, vol. 55.

58. Meer Afzul-ul-deen, shortly after his investiture, brought to the notice of Government that his father had enjoyed the title of " Nizamool Moolk Asuf sah " Bh'adur," which, literally translated, is the Polar Star of the State, the Warrior, the Warlike Friend, the Hero. This title was conferred by his Highness the Nizam, and Meer Afzul-id-deen requested that a title might be conferred on him on his accession to the office of Nabob, observing, that as his only connexion was with the British Government, and dependent on it alone for support, he could not apply elsewhere, and suggesting the following title: " Jumrood " Duol, a Kishmut Jung Bhadoor," or, " The Moon of the State, the Magnifi- " cent in War, the Hero." His application was referred to the Government of India on the 26th January 1822, with a recommendation that it should be acceded to; and in reply this Government was informed, on the 2d March 1822, that there was no objection. Orders were accordingly issued to confer the title solicited, " according to ancient custom and usage;" and on the 24th April 1822, Mr. Romer, the agent for the Governor, reported that he had carried them into effect, by presenting to the Nawab, in open durbar, a written declaration of the British Government having conferred the above title, a salute being fired on the occasion, and presents interchanged between the Nawab and himself. No reference was of course made to Delhi. The sceptre of the Moguls had passed into the hands of the Honourable Company, and a pension of 13,40,933 rupees had long before been granted by the British Government to the Emperor, for the support of himself and family.

59. I have now brought down this summary of the political connexion we have formed at Surat to the accession of the Nawab recently deceased; and the only event of his reign requiring notice is the case of his minister, Abdoolla Beg, who committed suicide in consequence of the proceedings adopted against him. I notice these, because, in the event of its being determined to recognise a successor to the late Nawab, they warn us to guard against one great evil of the system heretofore in force at Surat, and because of the opinions which the case elicited from the Honourable Court of Directors, and of the construction placed by that authority on Article VII. of the Treaty of 1800, which considerably varied from the opinions entertained by this government, and what had previously been the practice.

60. On the 3d May 1836, Mr. Sutherland, the agent at Surat, reported, that the Nawab Meer uf zul ud deen Khan, had intimated his intention of prosecuting

cuting certain claims which he possessed on Meerza Abdoola Beg, who he designated his late minister, and that he had expressed his hope that the agent would afford him every assistance, Mr. Sutherland, doubting the policy of interfering in the matter, proposed that the claims should be submitted to arbitration, to which both parties agreed; but this arrangement was frustrated by the death of the person selected as arbitrator. In reply, the Government declined to become directly involved in the dispute; and in answer to an appeal from Abdoolla Beg, dated the 7th February 1837, informed him they could not interfere in the dispute between the late master and himself. In January 1838 the agent reported, that the Nawab had reiterated his complaint against Abdoolla Beg, and had requested that he might be delivered over to his authority. The Government having now been appealed to by both parties, instructed the agent to endeavour to settle the dispute of punchayet. The Nawab, however, now declined to accede to this mode of adjustment, and demanded the surrender of his late minister, which the Government, after some discussion, acceded to under Article VII. of the Treaty of 1800, vesting him with full authority over his relations and servants, directing our agent to intimate to the Nawab the expectation of Government, that in judging of Abdoolla Beg's guilt he would act justly, and award such punishment only as was consistent with justice, and with the principles and practice of the British Government in its judicial administration. In conformity with these instructions, Abdoolla Beg was delivered up to the Nawab; and on the 6th March 1839 the agent reported, that having made an unsuccessful attempt to escape, he had killed himself with a sword, which he had seized from one of the guards placed over him. It did not appear, on inquiry, that the unfortunate man had been treated with any cruelty whilst in the Nawab's custody; and the Government having satisfied itself of this, deemed any further measures unnecessary.

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61. These proceedings having been reported to the Honourable Court of Directors on the 15th August 1840, the case was thus commented on in their of the 21st April 1841:

"The Nawab of Surat having withdrawn his confidence from Meerza Abdoolla "Beg, who for many years previous had nearly the entire management of his "affairs, and having preferred claims to a large amount against that individual "on account of alleged malversation, you at first advised both parties to consent "to an arbitration, which they did, and an unexceptionable arbitration was agreed "upon by them. The arbitrator, however, died before any progress had been "made in the inquiry, and the Nawab refused his consent to any fresh appointment, claiming under the treaty of the uncontrolled power of dealing with his "servant as he pleased. Meerza Abdoollo Beg had in the meantime quitted "the Nawab's household, and declared himself to have again become, as he "was originally by birth, a British subject. You nevertheless thought it imperative upon you to deliver him to the Nawab, by whom he was placed under "restraint, and after six months' confinement he committed suicide."

"We altogether dissent from the view which you have taken of the obligations of the Treaty of 1800 in a case of this nature."

"The only article of that engagement which has reference to the jurisdiction "of the Nawab over his servants, is the seventh; it is as follows:

"In complaints brought before the courts of justice, in which it shall appear, "either by the application of the Nabob, or the representation of the dependent, "at or before the time of giving in his or her answer, or by the petition of the "complainant, that both parties are relations or servants of the Nabob, it is "agreed that such parties shall in the first instance be referred for justice to "the Nabob, or to any person he may appoint to dispense it, any complaint "against the relations or immediate servants of the Nabob by persons of different description, shall, in the first instance, be made to the chief civil "servant at Surat, who shall refer it to the Nabob, who hereby engages to "order an immediate investigation to be made; or in case the parties should "desire it, to order the disputes to be referred to a proper arbitration, the "Nabob engaging to bring it to a direct issue, and to carry the sentence or "award, if unfavourable to his relation or servant, into immediate execution."

"On this article, it is to be remarked, in the first place, that the cases con"templated in it are those which arise among the Nabob's own relations or "servants, or between relations or servants of the Nawab and third parties, and

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" in which therefore the Nawab might with some colour of reason be considered " an impartial judge, or partial (if at all) on the side of the party complained " against. The article by no means bears out such a proceeding as that of " referring to the Nabob, as judge, a case in which he is himself the complainant, " and a deeply interested as well as highly irritated one.

" Secondly, even in the cases to which the article does apply, the jurisdiction " which it confers upon the Nawab is, in the first instance, only in the stipula- " tion binding the Nawab to make an investigation of all complaints against " his servants which are referred to him by the chief civil officer at Surat, gives " a clear right to the latter to see that the investigation is a *bonâ fide* one, and " the judgment and sentence not grossly at variance with the justice of the " case. Under no circumstances whatever does the treaty confer upon the " Nawab an unlimited power of deciding without appeal; and it would be " absurd, for instance, to suppose that if he should pass a capital sentence upon " one of his servants, you would be compelled or would be at liberty to tolerate " its execution.

" The only other article of the treaty on which the course you have pursued " in the present instance might be attempted to be justified is the third. This " article is as follows:

" It is agreed that the Nabob shall be treated on all occasions with the same " respect and distinction as his predecessors."

" It is scarcely necessary to remark that such a general assurance as this " cannot warrant the concession of the Nawab of a power at variance with the " first rules of justice.

" If the Nawab were still a sovereign prince in the actual government of his " country, he would have absolute power, no doubt, over his servants, as he would " over the rest of his subjects. But even then, if he were in the condition of " most of our dependent allies, he would exercise his sovereign rights, under a " discretionary power on the part of our own Government, to interpose with his " advice and authority, which interposition, in the case of some of the princes of " India, we have engaged to abstain from where their servants or household are " concerned. But we have come under no such obligation in the case of the Nawab " of Surat; provisions by which any person living in British territory is taken " out of the laws, and ought to be construed strictly. In our treaties with per- " sons in the situation of the Nawab of Surat, the articles which give them " jurisdiction over their relations and servants are intended for the preservation " of what they consider an essential element of their dignity, by exempting them " from the necessity of appearing as prosecutors or suitors in our courts of " justice. This object is (even in their own estimation) sufficiently provided for " when a separate officer is assigned for cases in which they are concerned, who " conducts his inquiries, when inquiries are necessary, extra-judicially; and we " know of no power possessed by the Nawab of Surat, or by any other native " prince in a similar position, which ought to be exercised otherwise than under " the inspection and control of such an officer.

" In the present case, after Meerza Abdoolla Beg had removed himself out of " the Nawab's power, and placed himself under the protection of our laws, we " consider the surrender of him to the Nawab's uncontrolled disposal to have " been extremely blameable. The proper course would have been to direct the " agent at Surat (unless a proper arbitrator could be agreed upon) to adjudicate " the case himself, the accused being meanwhile placed in custody, or held to " bail, and any property which might be in his possession attached. It is our " desire that such a course may be adopted in any future case of a similar " nature."

62. There can be no doubt that there is much force in the reasoning of the Honourable Court in the above Extract. The agent at Surat was now called upon to refer to his records, and report what had heretofore been the practice in cases similar to that of the late Meerza Abdoolla Beg. In my Minute of the 6th August 1842, I observed, on Mr. Elliot's Report, that " It throws but little " additional light upon this question. The absence of many precedents, how- " ever, those which exist being adverse to interference, in my opinion prove the " rule. The various allusions by former governments to the treaty show that " we have uniformly considered that the Nawab of Surat possesses the right of " absolute sovereignty over his own relations and servants; in fact, over all

" members

" members of his household; whether this system shall or shall not be con- 2 May 1856.
" tinued in practice hereafter is a question which higher authority must decide,
" and for this purpose a copy of this letter, and of Mr. Elliott's former com-
" munication, dated the 11th September last, should be sent to the Honourable
" Court, in reply to the 55th and 63d paragraphs of this despatch, and their orders
" on the subject solicited for our future guidance. It may be observed, that we
" are of opinion that any deviation from past usage will give the Nawab great
" umbrage, and be regarded as a violation of the treaty of 1800, and we
" should deprecate any change except in very extraordinary cases during his
" lifetime, but on his decease we may stipulate for such modifications of this
" system as may be deemed desirable or expedient. My colleague, Mr.
" Anderson, whose great local experience of the affairs of Surat renders his
" opinion of peculiar value, concurred in the above remarks, and observed:
" My own impression is, that the interpretation given to the treaty is very
" different from that communicated by the Honourable Court. The decisions
" quoted by Mr. Elliott, as given from time to time by the Bombay Govern-
" ment, are also all against the Honourable Court's present declared views, and
" I well recollect that it has been maintained that the Nawab has even the
" power of life and death over his family and servants; no instance of such,
" however, has ever been exercised, and had it been, and I do not doubt it,
" would have speedily led to an abrogation of the treaty. I believe the Nawab
" has exercised his hitherto supposed uncontrolled power over his family and
" servants with great leniency. I can recollect no cases to the contrary ever
" having been spoken of, nor can I recollect ever having been reported
" and made subject of public discussion; I allude here to cases of personal
" punishment. I have, however, always considered the supposed authority of
" the Nawab as excessive, and that too much has been conceded. I shall
" therefore think it quite right, on any future succession, that the views of
" the Honourable Court should be declared as the extent of jurisdiction which
" is for the future to be exercised by the Nawab of Surat; but, for the reasons
" stated in the Honourable the Governor's Minute, I would not press any
" change on the present Nawab, who is now far advanced in years, and who
" yet, in any extreme cases, we might require to attend to the advice of the
" agent. This discussion had scarcely terminated when we received intel-
" ligence of the Nawab's demise, which leaves us at full liberty to dictate our
" own terms to his successor, should one be appointed."

63. By Article IV. of the Treaty of 1800 a stipend of one lac of rupees per annum was settled on the Nawab and his heirs, and, in addition thereto, one-fifth of the net revenue. In March 1814, in consequence of a falling-off in the Nawab's share of one-fifth, he requested that it might be commuted for a fixed payment annually. In submitting this application for the consideration of Government, the chief, Mr. Crow, showed that the Nawab's average receipts for the preceding 13 years had been *Rs.* 40,109. 2., and stated that he expected this should be commuted for *Rs.* 60,000 annually. The government of the day, however, thought proper to disallow the arrangement. In 1817, however, the Government being desirous to relieve the trade of Surat from various vexatious imports, and not being able to do this without affecting the Nawab's claim to one-fifth of the revenue under the Treaty of 1800, a negotiation was opened by the Chief of Surat, which terminated in the Nawab's accepting in commutation of his fifth share of the revenue, the sum of *Rs.* 5,000 per annum. In reporting the result the Chief stated, that the Nawab expected to receive an assurance from the Government " that the commutation agreed to " of receiving annually a fixed cash payment of *Rs.* 50,000 shall be continued " to him and his heirs in the same manner as provided for under the treaty of " May 1800 in regard to the one-fifth share of the ceded revenues now relin- " quished; and that except in this particular the present arrangement shall not be " considered as affecting the existing treaty between the Honourable Company " and his Highness, the provisions of which are in all other respects to remain " in full force." An intimation to this effect was accordingly conveyed to the Nawab, in a letter from the Honourable the Governor, dated the 20th April 1818, and from that time the Nawab has continued to receive from the Company the annual stipend of one lac and *Rs.* 50,000.

Letter, dated 25 March 1818.

64. The Nawab Meer Ufzool-ed-deen Khan Kumrod Dowah, Husmut Lung Bhadoor,

2 May 1856.

Bhadoor died of cholera at Surat, on the 8th August 1842, at the age of 61 years and eight months, leaving no male issue. On the receipt of this intelligence, the agent at Surat was requested to report whether his Excellency had left any heirs, and, if so, who they are, and in what degree. The agent was at the same time called upon to report whether by the Nawab's death any change arises in the existing relations between the British Government and the Nawab's family; and, generally, what arrangements are necessary consequent on his Excellency's demise.

65. I now proceed to the last head of this Minute, namely, to inquire in what manner our past relations with the Nawabs of Surat are altered by the demise of the late Nawab; whether there is any person possessing an equitable right to succeed to the office and stipend enjoyed by the late Nawab; in the event of the title of Nawab having become extinct, the British Government is bound to continue the stipend of *Rs.* 150,000 enjoyed by the late Nawab and his family; and, if so, in what proportions? In elucidation of this subject, I deem it proper, in the first instance, to annex the genealogical table of the family of the late Nawab of Surat, furnished by Mr. Elliot with his Report, dated the 28th August last.

66. From this table, and the documents now under our consideration, it appears that the undermentioned persons connected with the late Nawab, are claimants either to the office of Nawab or to participate in the stipend:

1st. Doolum Begum, *alias* Badsha Begum, aged 41, daughter of Synd Hafizoola, the great grandson of the late Nawab of Broach, who was married to the late Nawab of Surat in 1816. Her claims are opposed by the other party on the ground that from the day of her marriage, discord ensued between her and her husband; that she lived separately on a stipend of 30 rupees per mensem, and food for four attendants; that she took no part in the festivities of the palace, not even on the occasion of the marriage of the Nawab's two daughters, and that she was not admitted to the Nawab's death bed. Mr. Elliott states it to be his opinion, that if the stipend is continued, this lady is entitled to receive one-sixteenth. It may further be observed, that Meer Serafraz Alee, in a communication the 23d November last, states, in regard to this lady, that a legal separation had taken place between her and the Nawab: "A great many persons "declare that she has been divorced by the late Nawab, who used to tell them "so, but his high sense of honour would not allow him to deprive her of food "and clothing." This account, however, is entirely without proof, and I consider this lady, according to our present information, to be entitled to whatever is assigned to her by the Mahomedan law, as the lawful widow of the late Nawab.

2dly. Munmanee, alias Umeer-oo-Nissa Begum. Of this lady, Mr. Elliot reports as follows: When very young, for reasons not known, she fled from her family and home; and accidentally meeting with a peon of the late Nawab's father, she was seized and given over to a eunuch, named Johel, and was ultimately placed by the late Nawab in his son's zenanah, as an attendant on a concubine. The late Nawab afterwards married her, but not until she had borne him three children, one of whom only, a daughter, survives; the marriage was celebrated on the 11th September 1835, and the Nawab at the same time contracted another marriage with a dancing girl of the name of Dullo. This information was derived from the slaves of the late Nawab's household; and, if true, certainly militates against her pretensions to be regarded as the lawful wife of the late Nawab. Mr. Elliot, however, states that this person always enjoyed the rank and respect due to the principal lady of the Nawab's establishment; and the following is her personal history, as given by herself: She was of the Rajpoot caste, and resided at Bhownuggur. When of the age of 12 or 13, a stranger came and purchased her (for what sum she does not know), and conveyed her to Randein, and from thence to the house of the late Nawab's father. With the consent of both his parents, the late Nawab took her into keeping, and three children were the fruit of this connexion, one of whom is now alive. Four years, four months, and four days after the birth of this daughter, she was married to the late Nawab, who, on the occasion, passed her a deed of emancipation from slavery.

Mr. Elliot, reports that the marriage was entered in the Cazees registry, and observes that it is of importance to note, that in the entry it is recorded: "She

"was

(Place Page 32)

Syjed Zenooddien;
otherwise
Shah Mukhum

Zeinoodien; otherwise
Meeya Methmo.

commonly called
Meeachund

Syjed Moveenooddien;
otherwise Meeyauchtun; dead
on the 27th February, 1763.

Wilaeta Khanum,
the 3rd Daughter of 1st
Begterkhan Nawab of Surat.

Meer Nujmood-dien Khan;
the late Bukshee of Surat.

Meer Khumrooddien,
dead.

Meer Khumsoodien;
dead.

Meer Kumrooddien Khan;
alive.

Meer Kootboddien;
alias Meer Hufeezooddien Hamud
Khan succeeded as Nawab on the 11th
March, 1763, and died in March, 1790.

the 3rd daughter of the
1st Begterkhan dead.

Meer Sudrooddien Khan
Sufder Jung; dead.

Larlee Begum;
dead.

Meer Kuseerooddien Khan; succeeded
as Nawab on the 13th May, 1800, and
dead on the 13th September, 1821.

Meer Nija mooddien Khan;
succeeded as Nawab on the 29th December,
1792, and dead on the 9th January, 1799.

Kherooddien Khan;
dead

Meer Ufzool ood dien Khan; installed in
the Office of the Nawab, on the 29th November,
1821, and dead on the 8th August, 1842.

Meer Moocenooddien Khan;
alive, present Bukshee.

Both dead

to

Shah Zadee Begum.
daughter alive

Bukhteearood Neesa Begum; daughter alive
and married to Meer Jaffer Alee, son of
the late Surupay Alee of Baroda.

Day & Son Lith.rs to the Queen

No. 265. Ordered, by The House of Commons, to be Printed, 9th June, 1856.

Henry Hansard, Printer.

" was emancipated by the nawab," from which previous slavery is clearly to be inferred; a mistake in regard to the lady's name occurs in the registry; she is called "Wazeer-ool Nassa," instead of "Umeer-ool Nessa," but the agent attaches no importance to the mistake, as his native agent was present at the marriage. Mr. Elliot therefore credits her story, and discredits that of her opponents; and therefore, pronouncing her to be the lawful wife of the late nawab, would assign her a sixteenth of the stipend. 2 May 1856.

3d. Buktyar-oo-Nissa-Begum, the daughter above alluded to, aged 21, and married to Meer Jaffer Allee, son of Meer Serafraz Allee of Baroda. Mr. Elliot states (paragraph 10 of his report), that as her mother was the purchased slave of the late nawab, she is by the Mohammedan law entitled to receive a moiety of the stipend of 150,000 rupees, "but that her children may not during her "life enjoy any share of the provision." Meer Serafraz Alee in his address to Government of the 8th October states that there is no "heir and successor" but his son, who is the husband of this lady; and Mr. Elliot reports that she claims for her husband the dignity and title of nawaub, adding, however, "he "has no claim to that office or to any portion of the stipend."

4th. Meer Jaffer Alee, the person above alluded to as the husband of Buckty-war-oo-Nissa Begum. His father Meer Serafraz Alee asserts, that the late nawab intended to appoint Meer Jaffer his successor, and wrote to Mr. Williams, then resident at Baroda. He produces also a letter, dated the 29th March 1834, purporting to have been written by the late nawab, informing him, "I adopt "your children to be my sons, and appointing them my successors, the cere-"monies of the nuptials are to be mutually performed. After the consummation "of the marriages, your sons shall be mine, and they shall live in my house." Another letter, in confirmation of the above, is also produced, dated the 30th March, from Abdoolla Beg, who was then the nawaub's minister. In a letter to this Government of the 22d September last, Meer Jaffer himself asserts his claim to succeed, and that the late nawaub always intended him to be his successor. In preferring his son's claim, Meer Serafraz Alee again contends that "Munmanee" was legally married, as is proved by the registry of the old cazee of Surat, containing the marriage bond, and proving her previous emancipation by the nawaub from bondage; and which, according to his law, rendered the marriage lawful. He states that the daughter was born on the 2d January 1822, and that on the 19th April 1826 the ceremony of "Bismilla" was performed with great pomp and under royal salutes. He also refers to a letter of Sir John Malcolm's, but I do not find this among our proceedings. Lastly, he asserts that on the daughter's birth, "the joy of the nawaub was greater than is "usually felt at the birth of a son," and congratulatory presents were made on the occasion. He has also obtained the evidence of the cazee of Surat in support of the claims of the party he represents, and states that the cazee was for 25 years on intimate terms of friendship with the late nawaub.

In refutation of the claims of this party, Doolum or Badsha Begum addressed Government on the 25th October last as follows: "Mumnanee having fled from "another city, came to the court of Meer Nusseer-ul-deen Khan, who directed "her to attend on Rungbehar, wife of Meer Afzool-ud-deen; afterwards the late "nawaub admitted Mumnanee to his bed, and Buktywar-oo-Nissa was born of "her; after a few years, when she had attained the age of four years, the nawaub "performed the ceremony of nika with Mumnanee, when Mumnanee having "fled to the nawaub's court, she declared that she sought shelter from the court "in consequence of not being able to bear the ill-treatment she received from her "husband. This circumstance is known to most of the females of the nawaub's "seraglio, and to other persons; as her husband was alive, how can her nika "with the Nawaub be legal? It is surprising that Buktywar-oo-Nissa, although "an illegitimate issue, should represent herself as a rightful heir to the newaub-"ship. I trust you will take these circumstances into your deliberate con-"sideration. Mumnanee was neither purchased, nor was her nika lawful. "Buktywar-oo-Nissa, whose origin is illegal, lays claim to the newaubship; but "according to Mahommedan law her claims are unfounded" In the same letter, this lady requested that the property of the late nawaub may be attached, which request has been complied* with, pending the present inquiry, to prevent its being misappropriated.

* *Vide* Letter to the Agent, dated 27 October 1842.

5th. Shahzadeh Begum, daughter of Kheemo-ed-deen Khan, a younger brother of the late nawaub, who died during the lifetime of their father, the

2 May 1856.

late Naseor-ud-deen Khan: she is of the age of 30, born of a concubine, and is betrothed to Meer Moeenoodeen Khan, the present bukshey of Surat. Her claim is disputed by Meer Surfraz Alee's party, on the ground that she has no claim to the inheritance, because her father died during the lifetime of her grandfather, "all offspring expiring during the lifetime of their parents "being, by the Mahommedan law, excluded from the inheritance." On the 6th October last, this lady addressed Government as follows: "I am entitled "to the nawaubship, and to the estate, and every other thing left behind by the "late nawaub, for I am a legitimate descendant. Buktyar-oo-Nissa pretends "to be the daughter of the late nawaub, but her pretensions are not borne out "by the Mahommedan law, for she was born three or four years before the "celebration of 'nika' (between the Nawaub Meer Afzoobeddeen and her "mother). Her mother, named Munmanee, fled from another city, and ob-"tained protection from the nawaub, was directed to attend on Rungbahar, his "wife, was afterwards admitted to his bed, and Buktyar-oo-Nissa was born of "her. When four years of age, the Nawaub performed the ceremony of nika "with her mother, Manmanee, and it is, therefore, evident she is not a legiti-"mate daughter. Munmanee was not even purchased; but when she came "to Surat, she declared her husband was alive, and that she had left him on "account of ill-treatment. Her nika, therefore, with the nawaub is not lawful, "according to the Mahomedan law; and as Buktyar-oo-Nissa was born previous "to the nika of her mother, she as well as Munmanee have no claim to the "nawaubship." In this letter this lady complains that Munmanee, her daughter, and Meer Jaffir had transferred cash, ornaments, seals, records, &c. to Meer Serafraz Alle, and requested the late nawaub's estate might be attached. In his letter of the 9th of November last, Meer Serafraz Alle asserts that this lady is excluded from the inheritance, not on account of her having been born of a slave, but because her father died during the lifetime of his father Khero-ed-deen, whose lawfully married wife is still alive, but remains silent, knowing that her claim would be as illegal as that now set forth by her late husband's daughter, Shakzadeh Begum. In his report of the 28th August last, the agent, Mr. Elliot, states, that this lady, though so nearly connected with the late nawaub (being his niece), has, by the Mahomedan law, no claim to share, her claim being suspended by those of Meer Mohennoodeen Khan and Meer Kum-roodeen Khan, descended from the uncle of the late nawaub's grandfather.

6th. Meer Mohennoodeen Khan is the present bukshy of Surat. From the genealogical table, furnished by Mr. Elliot, it will be seen that this person is the representative of the elder branch of the ancestor of the family of the late nawaub of Surat. The opposite party assert that this branch was entirely distinct, and separated from the nawaub's family, and that this invalidates his claim to the succession. Meer Serafraz Alle, in his address to Government of the 23d November, states, that the bukshy's ancestor, in the fifth generation from the present, was related to the nawaub's ancestor, when the latter resided at Boohanpore; but that from the time of the ancestor of each residing at Surat, no kind of claim has arisen from one party upon the other. Moreover a deed of release was passed through the mother of the late nawaub, between the late nawaub and Meer Suder-oo-deen, the present bukshy's father, which renders his present claim null and void. The Meer states he has forwarded his release to Government, but it is not among our records. Mr. Elliot, in his report of the 28th August last (paragraph 17), states, that this person is grand-son of Meer Nujmoodeen Khan: he is descended from the elder branch of the family, and the conviction of Government that this circumstance entitled him to their consideration, may be deduced from the terms of the sunnud granted to Nujmoodeen Khan Bhadoor Sufdur-ool-Moolk, dated the 22d June 1800, and signed by the Governor of Bombay, Mr. Duncan, and from which the following is an extract: "It has become expedient to make a suitable provision for the "said Nujmoodeen Khan and his family, who are near relatives and descen-"dants from the same paternal stock as the Nuwaub of Surat." Mr. Elliot does not consider that the buckshy is entitled to succeed to the title and office of nawaub, but that he is entitled to one-eighth and a half of the stipend, or three annas in the rupee.

7th. Meer Krumroodeen Khan is also descended from the elder branch of the family of the late Nawaub of Surat, and Mr. Elliot, therefore, considers that he also is entitled to one-eighth and a half of the stipend, or three annas in the rupee.

rupee. He has petitioned that his allowance may be defrayed from the late nawaub's private property. This has not been forwarded to Government, but I infer that though this person claims to share in the late nawaub's estate, he has not as yet preferred any claim on the stipend of 1,50,000 rupees.

8th. Jeegree Begum, the widow of Meer Kherood-deen Khan, a brother of the late Nawaub of Surat, who Mr. Elliot reports, notwithstanding this connexion, is excluded from any share of the stipend in consequence of her husband having died before his father and mother.

9th. Ujub Bahar and Rung Bahar, two concubines of the late Nawaub; they are entitled to no provision; but by the Mahomedan law are to be considered free from the date of the Nawaub's decease.

67. I shall now state my opinion as to whether any of the above candidates possess a claim to succeed to the office and title of nawaub. This is a distinct question from that of the appropriation of the stipend of 1,50,000 rupees, and requires to be first decided; for it must be obvious that if, on the grounds of right, or failing this, of policy, we determine to maintain the title of nawaub, the stipend should be conferred on the person selected for the office, with such deductions as may be considered just and expedient to assign to the other members of the late Nawaub's family. I may here premise by observing, that I am of opinion that after having collected all the information in our power, this question of continuing the office of nawaub should be referred for the consideration and final decision of the Right honourable the Governor-general of India.

68. In his report of the 28th August last (paragraph 22), Mr. Elliot thus declares the title of nawaub to have become extinct: "In reply to the 5th paragraph of your letter, requesting to know the effect of this event upon our mutual relationship, I have the honour to state, that, in my opinion, the question appears to be settled beyond the possibility of a doubt. By the death of his Excellency, without a male descendant to his titles and immunities, the whole political connexion that existed between this authority and the British Government is necessarily dissolved; nor can any part of the treaty by which it was ratified remain in force, with the exception of that Article which entitles his legal heirs, according to their degrees of kindred or connexion, to share in the allowance hitherto enjoyed by him: and it may perhaps be necessary to pass an enactment repeating those Regulations which relate to his Excellency the Nawaub, namely, Regulation II., Section 21, Clause 2; Clause 2, Section 1, Regulation XI., 1827; Regulation XVII., Section 29, Clause 2, 1827; Regulation XXXIV., 1827; and, again, the various privileges enjoyed by the Nawaub, in virtue of his station, are now forfeited, and cannot be extended to any of his Excellency's heirs."

69. A reference to the genealogical table, given at paragraph 65 of this Minute, clearly shows that the direct heirs of the late Nawaub are confined to females, who, by reason of their sex, are excluded from the succession. On this point we are fortunately in possession of the sentiments of the Government of India, declared in Mr. Secretary Maddock's letter of the 2d March 1840, in relation to the succession to the Peyut Estate, in the Deccan. On this occasion the Government of India recorded its opinion, "that it is contrary to law and usage that the daughter of a Mahomedan Chief should succeed to a government such as that of Peyut, or that the distant relatives can put forth their claim of succession as of right: under these circumstances his Lordship in Council is of opinion that the state may be considered as an escheat to the British Government;" at the same time the Government of India sanctioned any arrangement in regard to the Peyut Estate which would not admit the principle of Mahomedan female inheritance. This decision therefore at once negatives the claims and pretensions of the claimants on my list, namely, the two widows, the niece and daughter of the late Nawaub; and as by Mahomedan law and usage a wife cannot transfer to her husband what she herself cannot inherit, the claim of a fifth candidate, Meer Jaffer Allee, to succeed to the office of Nawaub in virtue of having married the late Nawaub's daughter, may also be dismissed without further remarks as altogether untenable.

70. It only therefore remains to consider the claims of Moheenoodeen Khan Buksby and Khunnroodeen Khan (sixth and seventh on my list), the descendants of the elder branch of the family of the late Nawaub of Surat, and who, if they

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possessed any right to the office of Nawaub, ought to have succeeded to it many years ago. The question now is, have these persons any right to succeed in consequence of the present failure of heirs in the direct line? It is clear that under the decision passed in the Peyut case by the Government of India, being only distant relatives, they cannot claim of right; and the most that can be said in their favour is, that if on grounds of policy (to which I confess I am averse) we determine to maintain the office of nawaub, inconvenient as it has been found in many respects to the administration of affairs at Surat, we may, as an expedient, resort to this branch.

71. I think, however, an arrangement of this kind would be unfair to the direct heirs of the late Nawaub in the female line, who, as I shall hereafter show, are by the treaty of 1800, if no Nawaub is elected, entitled to receive, in certain proportions, the annual stipend of *Rs.* 1,50,000. I am also quite satisfied that when Mr. Duncan concluded the treaty of 1800, he never contemplated the possibility of the office of Nawaub descending to that branch of the family of which the Bukshy is now the representative; for on reference to his proceedings, which were very minutely recorded, I find that he treated them as two distinct families, and a very liberal grant was conferred on the Bukshy's family, independently of the treaty with the Nawaub, and which is enjoyed by them to the present day, and is in perpetuity.

* Dated 25 July 1800.

72. In this Minute* of his proceedings at Surat, Mr. Duncan states, that previous to the treaty, Nejemed-deen, at that time Bukshy at Surat, received a salary in that capacity, in addition to the profits he derived from certain districts farmed to him, and some judicial fees, averaging, according to his own statement, *Rs.* 50,000 per annum. Besides these emoluments, he held various jagheers, which his relations the Nawaubs of Surat had alienated in his favour from the Moghullaye, or revenues assigned for the support of the Nawaubship.

The Bukshy was anxious to retain these jagheers, which, according to the valuation specified in the perwanehs or grants, were of the annual value of *Rs.* 16,810. The Governor, Mr. Duncan, finally arranged that the Bukshy should, including these jagheers, receive an annual stipend of *Rs.* 30,000, to be continued at his death to his children and family at the reduced rate of *Rs.* 24,000. The terms of this grant I have already recited in the 54th paragraph of my Minute.

73. In the investigation which preceded the above grant, one very material point was established, which it may be proper to note here, namely, that when subject to the Crown of Delhi, the Nawabs,* or as they were originally designated the Mutasiddies,† of Surat, had no power to alienate any part of their possessions without the imperial authority, seven sunnuds were produced by the Bukshy in support of his claims, all of which contain a clause that the grant is "made till the arrival of sunnud from Court." Four of them are dated in A. D. 1732, 1760, 1762, and 1770. Five of them were granted by Meed Atchen, alias Mayen-ed-deen, and two by his son, Hafeez-ed-deen Kaymed Dowla: they are all recorded in Mr. Duncan's diary. The Bukshy was obliged to admit that none of these grants had been confirmed by the King of Delhi, but urged that the king's consent "was a mere matter of form."

74. I may also here mention, that the subordinate situation of the nawabs of Surat, in relation to the Kings of Delhi, was strongly established by various royal grants produced by the family of Mahomed Bakeir, *alias* Faris Khan, who was for many years a faithful adherent of the Honourable Company, and through our influence was appointed naib to the Nawaub Mayen-ed-deen. Faris Khan died on the 7th November 1770, and his family produced before Mr. Duncan sunnuds conferred by the Emperors of Delhi, in support of certain rights they claimed; there was as follows:—

1st. A royal firman, appointing Faris Khan nawaub of Surat, dated in the 6th year of Alumgeer's reign, A. H. 1173, or A. D. 1759. This nominated Faris Khan nawaub, and removed his rival Ally Nawaub Khan. The appointment

* Nawab, the King's Lieutenant or Viceroy, properly Naib, but changed to the plural number, in which all great men are addressed in the East.

† Mutasiddy, a clerk of the cheque, or any writer employed about the revenues.

ment was never enforced, but in virtue of it Faris Khan's family, in 1800, preferred a claim to the office of Nawab The deed is only so far of importance that it proves, so late as A. D. 1759, the Kings of Delhi assumed the right of removing one Nawab and appointing his successor, though they did not possess the power to enforce the right.

2d. A royal sunnud, granting 11 lacs of dams, or 11,000 rupees, from the Gold Pergunnah to Fariskhan, in perpetuity.

3d. Another to the same effect, apparently confirming No. 2, issued in the 23d year of the reign of the Emperor Mahomed Shah, A. D. 1740-41.

4th. A royal grant of 35 lacs and 75,000 dams in perpetuity, an assignment on the Bulsar district, dated in A. D. 1757.

5th. A royal grant of 240 begas of land to himself and family, in the 6th year of Mahomed Shah, dated 1724 A. D.

6th. An order to Fariskhan to displace Mayeneed Deen Khan, in favour of Sufdur Khan, produced to prove the great share which Faris Khan possessed of the royal favour.

7th. An order, in the 5th year of the reign of Alumgeer, dated 31st October 1758, conferring on Fariskhan the Nukham Castle Stamp-office, at Surat.

8th. The brokerage of silk, conferred by Shah Alum, in A. D. 1772, or Mahomed Rahim, Fariskhan's son.

9th. Mahomed Rahim appointed to succeed his father as Kotwall of Surat. Aly Shah Alum, in 1778, under the seal of the vizier, Nizam ul moolk Asuf Shah.

10th. A sunnud for the command of a small fleet at Surat to the same, under the seal of Enayet, an officer of Shah Jehans.

Fariskhan's family surrendered to Mr. Duncan all these sunnuds, and, in lieu of their claims for grants of attugluna jagheers and officers, accepted a pension of 130 rupees per mensem, for which a sunnud, dated the 22d June 1800, was granted.

75. It appears to me, for the reasons I have stated, no one can claim to suceeed to the late Nawaub as a matter of right, but that if it is considered politic to maintain the title, we may resort to the collateral branch of the family, of which the present Bukshy is the representative, in which case the separate maintenance assigned to that branch by Mr. Duncan ought, in my opinion, to be resumed, and such amount of nuzerana, or relief, be levied as may be deemed equitable. I do not apprehend, however, that this course will be followed, but am, on the contrary, disposed to think that we shall avail ourselves of the demise of the late Nawab without male issue, to declare the title to have become extinct.

76. In this case, are we bound to continue the stipend of 150,000 rupees, and if so, to whom? I am of opinion that we are bound to continue this allowance in full, though questions dependent on the Mahomedan law arise respecting the parties to whom it is due, and in what proportions.

77. It may perhaps be argued, that the stipend of 150,000 rupees was not merely granted for the support of the Nawab's family, but also for the maintenance of the office and dignity of Nawab, and for the establishments and state which that office required him to retain; therefore, supposing the office of Nawaub to have lapsed, the British Government is not bound to continue so large an allowance to his family, or to regard the stipend as common with any other property the family may inherit.

78. At first sight, there is some force in this argument; but, after a very attentive consideration of this question, I am of opinion that this construction is opposed to the treaty of 1800, and likewise to the intentions recorded at the time by Mr. Duncan, who negotiated the treaty.

79. The treaty, dated the 10th March 1800, will be found at page 90 of the printed collection of treaties between the East India Company and the states bordering on the Presidency of Bombay. The preamble to the treaty states that it is entered into by the Company and their successors, and by the Nawaub Nassur sol-deen Khan and his heirs and successors; the fact of "heirs and successors" being here conjoined, favour the construction that the dignity of Nawaub and the stipend formed a conjoined inheritance, and that both must stand or fall together; the 4th article of the treaty, however, granting the stipend, only mentions heirs as follows:—

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" The English Company agree to pay to the Nawaub Nasur-ed-deen and his " heirs, out of the revenues of Surat and its dependencies, in four equal quarterly " payments, one lack of rupees annually, which shall be considered to be the " first charge payable from the said revenues; the Company also engage to " pay to the said Nawaub and his heirs, in addition to the above lack of rupees, " a proportion of one-fifth of the annual revenues now arising, or which may " hereafter arise, from the said city and its dependencies; after deducting the " said lack of rupees, the sum payable to the Mahrattas, and the charges of " collection, the residue, after the foregoing deductions, shall be at the disposal " of the said Company."

80. On this part of the question, Mr. Blane, in his report of the 5th November last, observes as follows:—" With respect to the necessary connexion of the " dignity and stipend, the wording of the treaty is in some measure indefinite. " In Article IV., relating to the stipend, the word ' heirs' is used without speci- " fying ' heirs' to the nawaubship; but on the other hand, the stipend was fixed " in lieu of revenue derived from the office of nawaub, and upon the succession " of the lately deceased Nawaub, the only one under the treaty, the dignity and " stipend were continued to him as a combined inheritance. Some ambiguity " in like manner exists from the wording of the treaty: as regarding the mean- " ing of the word ' heirs,' the Preamble uses it with reference to the dignity; and " Articles IV. with reference to the stipend; from which, as well as from the ex- " planatory particulars in the diary, it would seem that both are included as here- " ditary. Mr. Elliot has stated the law, if hereditary be taken to mean heirship " according to the exposition of the Mahomedan lawyers; but the one succession " above referred to is in opposition to the applicability of the common law of " inheritance; and on the occasion of a claim being raised by the mother of " the deceased, as alluded to in the extract of her petition transcribed in the " margin, the Bombay Government, in a letter of the 1st April, No. 549 of 1822, " then decided that the Government cannot interfere in the family disputes of " the Nawaub."

81. Mr. Elliot, who was our agent at Surat on the demise of the late Nawaub, does not discuss this question at all, but assumes, as a matter of course, that the family are entitled to inherit the stipend, and proposes the manner in which it should be distributed among the different members of the family, taking for his guide what he believes to be the principle of the Mahomedan law of inheritance.

82. Had we merely the treaty to guide us, I admit the ambiguity alluded to by Mr. Blane. The negotiator of the treaty, however, recorded at the time what were his intentions. He did more than this, for it appears that Mr. Duncan chiefly prevailed upon the Nawaub to accept the treaty, by pointing out the benefit which it secured to his family in perpetuity; the following extracts from Mr. Duncan's diary* place this beyond doubt, and on these I found my opinion that Government is now bound in honour, equity and good faith to continue the stipend.

Annexed to the Minute of his proceedings at Surat.

The Governor points out to the Nawaub's agent, Kerfreram, " the expediency " of the Nawaub's cheerful acquiescence in and quickly signing the new treaty, " which I told him would give a security for an honourable provision to his " master and his family from generation to generation, greater than they had " ever yet had, since the former articles of agreement of 1759 were evidently " only of a temporary nature, whereas the Company, who never failed in a strict " adherence to their engagements, would now become bound in perpetuity to " the support of the Nawaub and his family."

Diary of 12 May 800.

On another occasion, Mr. Duncan still more forcibly records: " All the real " objection the Nawaub seemed to have to the signing of the treaty was from " the 4th article not having the words ' for ever' after the word ' heirs' in the " second line. I assured Visoonath, the Nawab's agent, ' That a stipulation " ' for a man and his heirs meant for ever, or until such heirs become " ' extinct.' "

Lastly, in reply to some communication from the Nawaub, when he was about to leave Surat, Mr. Duncan remarked that the Nawaub must admit he was " by no means reduced to a level with the other inhabitants, he and his family " being, on the contrary, secured in special privileges, such as a constant " succession to the newabship, and a freedom from the jurisdiction of the " court of justice."

83. Admitting

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83. Admitting, therefore, that by the treaty and the declarations of the framer of the treaty, we are bound to continue the stipend, though we declare the title and office of nawaub extinct, and therefore not to be renewed, in what manner shall it be continued, or in other words, what persons are entitled to participate in it? Mr. Elliott has proposed the following distribution:

		Annas, per mensem.	Per annum.
1. Doolum Begum, - -	1	- 781 4	9,375
2. Munmanee, - - -	1	- 781 4	9,375
3. Buckhtjarool Nissa Begum,	8	- 6,250 0	75,000
4. Meer Mohenyoodeen -	3	- 2,343 12	28,125
5. Meer Kumroodeen - -	3	- 2,343 12	28,125
		12,500 0	1,50,000

The agent further states, that although the late Nawab's niece is, by the Mahomedan law, excluded from the inheritance, still as she was solely dependent upon him for support, some provision should be assigned for her maintenance, and also for the late Nawab's two concubines, who will be otherwise left destitute. I concur in these recommendations, whatever is so assigned being as a matter of course deducted from the stipend.

84. The distribution proposed by Mr. Elliott is founded on the Mahomedan law, but before this is sanctioned, some further inquiries are necessary to satisfy us what the law applicable to the case really is. For several reasons, I should prefer that this inquiry should take place on the other side of India; at this Residency there are but few Mahomedan states, and the field of inquiry is therefore very limited.

For the same reason also, I doubt if we could obtain an impartial opinion* of the law of the case if the Government of India indeed should not consider the case one in which we are at liberty to distribute the stipend as we may see fit, instead of being guided by the common law of inheritance.

85. On referring to the list of claimants given at para. 66 of this minute, it will be seen that they are nine in number. In regard to the first, Doolum Begum, no question of law can arise; as the lawful wife of the late Nawaub her right to participate is undoubted, her share ceasing on her death. In regard to the second (Munmanee), some intricate questions of law may arise which can easily be settled by a reference to persons on the other side of India, learned in the Mahomedan law. The chief question is, can she, under the circumstances of her connexion with the Nawab, her being of the Rajpoot tribe, and a concubine for several years before her alleged marriage, be regarded as the lawful wife of the late Nuwaub, and as such entitled to share. In like manner, in respect to the third (Bukhtyar-oo-Nissa Begum), questions dependent on her mother arise. If it is declared that Munmanee was not lawfully married, her claims become invalidated; admitting, however, the legality of the marriage, the question of law arises whether her daughter, born in a state of concubinage four years previously, becomes by the subsequent marriage legitimate, and acquires the same rights as if she had been born in lawful wedlock; I confess I have very great doubts on this point. In respect to the fourth (Meer Jaffa Allee), the husband of this lady, I believe no doubt can arise. In respect to the fifth (Shah Zadeh Begum), niece to the late Nawaab, I believe it is rightly asserted that she is excluded in strict right from sharing, for the reason stated, but if any doubt exists, it will be cleared up by the reference proposed to the Government of India. The same remark applies to the eighth person on my list (Jigree Begum), who, however, has not, I believe, preferred any claim to participate in the stipend. In respect to the sixth (Mahaenoodin Bukshy) and the 7th (Kumroodeen), I am doubtful whether these persons can be viewed in the light of "heirs" of the Nawaub of Surat, and unless they can be so considered, they can have no right to participate in the stipend. This question must mainly depend upon the view which the Government of India may take of

* The proceedings before us show that the Cazee of Surat is in the interest of one of the parties who are claimants.

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of the nature of the stipend, whether it is a distinct political allowance descendible only to the direct heirs of the Nawaub's family, or whether it is to be divided according to the Mahomedan law, like an ordinary inheritance of property. In the latter case, the Government would be benefited, for the Bukshy's family would then, I am of opinion, possess no claim to the continuance of the separate maintenance assigned to them in 1800 by Mr. Duncan, which would revert to Government.

86. I have only, in conclusion, to suggest that the minute and the documents from which it has been framed be now forwarded for the consideration and orders of the Government of India, who will have to determine, 1st. Whether the office and title of Nawab of Surat has become extinct; 2d. If so, whether it is expedient to renew the office, and in whose favour; 3d. Whether the British Government is bound to continue the stipend of 1,50,000 rupees granted to the Nawab under article IV. of the treaty of 1800; 4th, and lastly, in this case, to whom and in what proportions is the amount to be divided. I believe my minute contains all the information necessary to determine these points; but I shall be much obliged to Mr. Anderson if he will record his opinions on the case generally, and the course which Government should pursue; for, having formerly held the situation of judge at Surat, and by this means become intimately connected with the nature of our relations at Surat, the opinions of my colleague will be particularly valuable.

10th April 1843. (signed) *George Arthur.*

TRANSLATION of an Appeal Petition of Padshah Begum, Widow of his Excellency the late Nawab of Surat, to the address of the Right honourable the Governor in Council.

THE acting agent of the Right honourable the Governor at Surat decided, on the 7th April 1854, the claim preferred by Meer Jaffer Alee as heir to his wife Bukharooi Nissa Begum, to the Nugeena Bag, awarding it to him with Rs. 2,052. 6 A. 2 P., being its produce under attachment. I am dissatisfied with this decision, and submit to your Honourable Board this appeal, under the following grounds:—

1. The acting agent, in the 5th paragraph of his decision, remarks; "Two "questions in this case arise for consideration; the 1st. Whether his Excellency "the late Nawab ever executed the deed of gift produced at all; the 2d. If he "did so, he ever gave the same validity." Regarding the first of these questions he says, in the 6th paragraph, the deed of gift in question was executed.

2. He considers the fact of the deed bearing the seals of several persons, and the testimony of Goolam Alee Hazee and Meettaram Dayaram, as proving its authenticity; this document, however, can only be called a deed of gift according to the Mahomedan law. If it is at all true, it can only be held as a position; and if so, the property mentioned in it cannot be said to have been given in gift, according to the Mahomedan. In support of this assertion, I have given my reasons in the third and fourth paragraphs of the last answer I have recorded in this case. The agent not having refuted these arguments by any legal proofs, I briefly repeat them here. The deed of gift does not show that the Nawab declares, according to the Mahomedan law, he makes the gift. The depositions of the witnesses produced in this case also do not show that the Nawab ever declared in their presence that he presented the garden in question. If such declaration of the Nawab is not established, the gift cannot be valid according to the Mahomedan law, as it is prescribed in all the books of the law that tender, acceptance and seisin are essentially necessary to the validity of the gift; the word "tender" requires the donor should declare he presented, gave or made the donee proprietor of such a thing; the word "acceptance" requires that the donee should accept the gift; and the word "seisin" requires that the thing should be, at the time of making the gift, immediately transferred from the possession of the donor to that of the donee. This is written in the 21st line of the 700th page of the book called Hidaya. These requirements of the law have not been complied with in the case of this gift. If, therefore, the agent considers the deed was executed, it is still not valid as a deed of gift.

3. The

Genealogical Table,

OF HIS EXCELLENCY THE NAWAB OF SURAT.

(To face Page 40)

Syedzenooddien, otherwise Shah Mukhum.

Zeeaooddien, otherwise Meerya Meethun.

Meer Nujmooddien Khan, the late Bukshire of Surat.

Meer Kumrooddien, dead.

Meer Shumsood-dien, dead

Meer Kumrooddien Khan, alive

Meer Sudrooddien Khan, Sufdeir Jung, dead.

Sarba Begum, dead.

Kherooddien Khan, dead.

Meer Mooeenooddien Khan, alive, present Bukshee

Betrothed to

Shahzadee Bugum, daughter alive.

Seyed Hoseenooddun, otherwise Meerya Uchhun, dead on the 27th Feby, 1763.

Welaeetee Khanum, the 3rd daughter of the 1st Begler-Khan, Nawab of Surat.

Meer Koolbooddien, alias Meer Hufeezooddien Hamud Khan, succeded as Nawab on the 14th March, 1763, and dead in March, 1790.

The third daughter of the 2nd Begler-Khan, dead.

Meer Nuseerooddien Khan, succeeded as Nawab on the 13th May, 1800, and dead on the 13th Sept., 1821.

Meer Najamooddien Khan, succeeded as Nawab on the 29th December, 1792, and dead on the 9th Jany, 1799.

Meer Ufzoolooddien Khan, installed in the Office of the Nawab on the 29th Novr, 1821, and dead on the 18th August, 1842.

Bukhteearool Neesa Begum, daughter alive and married to Meer Jaffer Allee, son of Meer Surufray Allee of Baroda.

Signed

G. L. Elliot

Agent. Hon^ble the Gov^r Surat

Day & Son Lith^rs to the Queen.

No 265. Ordered, by the House of Commons, to be Printed, 9th June, 1856.

Henry Hansard, Printer.

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3. The acting agent, in the 7th paragraph, acknowledges that, according to the Mahomedan law, the gift of a father to his child is perfected by the mere declaration, and that at the utmost it is only necessary the donee be immediately put in possession. It is, therefore, evidently unjust to decide in the claimant's favour, by putting aside the requirements of the Mahomedan law above alluded to, and which have been acknowledged to have been essentially necessary to the validity of a gift, as the Nawab never made over the possession of the property in dispute up to the day of his death, or declared that he made the gift.

4. In the same 7th paragraph the agent remarks, "Bukharool Nissa Begum "was, at the date of the deed alluded to above, only seven years old, therefore "could not enter on such possession herself, but it was competent to the Nawab, "as her guardian, to do so for her; and accordingly he, in the deed, has "distinctly specified he did so. He has therein recorded he dispossessed him, "and resumed possession on her behalf. This completed the transaction." This conclusion of the agent is evidently unjust and erroneous, as the writer of the deed says the Nawab, as the begum's guardian, acknowledges it is therefore a declaration on the part of the writer, instead of which, the agent remarking that it is the Nawab's declaration, considers the transaction completed, which is a mistake. The style of the deed of gift in question will convince your honourable Board as to the truth of this; it is therefore needless to write any more about it.

5. The agent in the same paragraph further remarks, "Gifts to a relative "within the prohibited degrees being irrevocable, this gift I consider to be "valid, and one that cannot now be questioned." This conclusion of the agent does not seem to be correct, as a gift made to a relative, or anybody else, contrary to the Mahomedan law, is invalid; it is therefore evidently unjust to consider, as the agent has done, this gift which has not been made according to the Mahomedan law.

6. The agent, in the 8th paragraph, remarks, "the produce of the bag in "question was credited in the Nawab's accounts from the date of the deed, till "Sumrat 1891, A. D. 1834-35, after which time, as stated by Meer Jaffer Alee, "though first to the Nawab, the said produce in full at the average rate of "227 rupees a year, being more than it has yielded under the collector, being "attached, is again debited as paid over to his wife." This conclusion of the agent is unjust, as the Nawab's duffer is not at all to be trusted. This assertion is verified by the decision come to by the late agent, Mr. Frere, in the case of the claim preferred by Mahomed Alee Beg to the Nawab's estate, which decision has obtained the sanction of Government notwithstanding this, although the agent acknowledges the Nawab's accounts as useless, yet he holds them in this case, inasmuch as he says, that they establish that Bukhtiarool Nissa Begum received the produce, when it is evident from such accounts it is therein debited for one year only; had this been true, the produce would have been debited on these accounts year after year, from the date of the deed to that of the Nawab's death; that it is not so, proves that this entry is fraudulent.

7. The agent further remarks, "With two exceptions, Sumruts 1894 and "1896, the original as well as the fair copies of the Nawab's account books for "the years alluded to above are forthcoming, and appear to me trustworthy, "though not kept after the strict manner of merchants, the circumstance of "the produce being again brought to account in Sumrut 1891 (A. D. 1834-35) "is explained thus: it is said the person now deceased who officiated as deervan "up to that time, excluded from his books all that was not strictly the Nawab's "own, whereas the person nominated in that year, brought to account all that "passed through his hands, and showed how it was disposed of, whether the "same was the produce of the Nawab's peculiar personal property, or of that he "bestowed in gift on others. I think the explanation satisfactory, and see "no reason, on the evidence before me, to doubt its truthfulness." This opinion of the agent is mere assumption; the agent acknowledges that those accounts are not kept after the strict manner of merchants, and I have many times explained that they were not sequestrated immediately after the death of the Nawab, according to my wish; they remained in Meer Jaffer Alee's hands without any restraint for three months, during which period he may have got the Nawab's servants, who were taken into and now are in his service, to make such alteration in them as he pleased; had these accounts been regular, such

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alterations could not have been made, but the duffters being irregular, it was not difficult for the same writers to write in them at any time whatever they pleased; it is very strange, therefore, that the agent thinks the explanation of the circumstances under which such accounts were kept, satisfactory. The witness Mohambel, on whose deposition the agent seems to repose confidence, is a manager of this case on behalf of Meer Jaffer Allee, and the case is conducted solely on his advice; agent considering his evidence as true, and leaving aside the requirements of the Mahomedan law, has awarded, without any ground, the property in question to the claimant; this is a tyranny to the true heirs.

8. The agent considers the gift to be proved, on the ground of Bukhharoo Nissa Begum enjoying the produce, but I represent that the produce was never paid to her; had she received it, the fact cannot make her the possessor. In the case of gifts, if the requirements of the law above alluded to are not complicated, the gifts cannot be said to be valid.

9. It is also defined by the law, that if the donee be a minor at the time of the gift, the possession should be transferred immediately the donee attains the proper age. Bukhtiarool Nissa Begum was married in 18 ; when she had become of proper age, and the Nawab died years after; had the deed of gift been rendered valid during that interval, how could she have failed to obtain possession? The Nawab would not have refrained from making over the possession. After the Ameerool Nissa Begum attained the proper age, the Nawab wrote two letters to the agent in 1835 and 1838, and sent with them two lists of all his personal property, in which this property was included. If such is the case, how can the gift be said to be perfected? the agent's conclusion, therefore, is evidently unjust.

10. The agent in the 9th para. remarks, after the marriage of Bukhtiarool Nissa Begum, the management of the garden ought to, and would, under ordinary circumstances, have been then transferred to her husband; but the late Nawab's peculiar ideas of what was due to his own dignity and position, would readily account for his retaining the same in his own hands, especially as Meer Jaffir Alee and his wife continued to reside with him. On this I represent that the agent acknowledges, in the above quoted paragraph, the management of this garden ought to, under ordinary circumstances, have been transferred to her husband, which was not done; the three requirements of the Mahomedan law tender acceptance, and seisin have therefore not been complied with, and the gift is not legally valid, which is evident from what the agent himself remarks. Notwithstanding this, the agent concludes, "At all events, the gift "being as above set forth valid and irrevocable, the non-transfer of the manage- "ment at the time cannot affect the present claim." That I beg to draw your honourable Board's attention, and to urge, that although the transfer of possession and the legal validity of the gift have not been established, is it to be supposed the British Government is so unjust as to pass illegal awards, be the circumstances as they may? If this happens, it cannot be called justice, and will be an infringement of the proprietary rights of the true heirs.

11. Taking into consideration the above arguments, I pray your honourable Board will be pleased to reverse the decision, awarding the garden in dispute, with its produce Rs. 2,052. 6. 2. accumulated, whilst under attachment to the claimant, and including it in the other property, direct it to be distributed amongst the true heirs.

(Seal). (Signed in Persian.)

27 June 1854.

True translation.

(signed) *W. H. Harris*, A. G.

The appeal of Meer Kumroodeen's heirs against this decision being word for word the same as the above appeal of Padshah Begum, the agent has not sent a separate translation of it.

Surat Office, for the Right honourable the Governor.

18 August 1854. (signed) *W. H. Harrison*, A. G.

TRANSLATION

TRANSLATION of an Appeal Petition of Padshah Begum, Widow of his Excellency the late Nawab of Surat, to the Address of the Right Honourable the Governor in Council. 2 May 1856.

THAT Meer Jaffer Ali, as heir to his infant son Ameeroodeen, deceased, claimed certain state jewels and insignia, and other miscellaneous articles of jewellery, and the acting agent decided this claim on the 7th April 1854, according to Meer Jaffer Ali in his 16th paragraph. Articles to the amount of *Rs.* 1,836. 8., and others valued at 1,886 rupees: total *Rs.* 3,722. 8.; and rejecting his claim on the rest, I am dissatisfied with this decision, and present this petition of appeal as under.

1. The acting agent, in investigating the claim to the miscellaneous articles of jewellery, has awarded those enumerated in the 6th paragraph: he remarks, "From his Excellency the Nawab's accounts, I see no reason to doubt he had "the ornament, &c. as per margin, expressly made up for Ameer Ameeroodin; "the formal delivery of these is not proved with the necessity that the Maho-"medan law may require." In reply, I have to represent that, as the acting agent owns these articles not to have been delivered over according to the Mahomedan law, it is quite unjust to come to a decision entirely opposed to that law, and to award the articles to one who is not entitled to them.

2. Justice depends on two principles, laws and proofs; it cannot be administered on assumption only. If it be so administered, laws and proofs will be of no avail. The principles, however, on which Government act are such, that in case of Mussulmans, Mahomedan law and the proofs accorded are taken into consideration, and if the property that is in the hand of one is so proved to belong to another, it is then delivered over to the other so entitled to possess it. It is, therefore, evidently unjust to decide as is done on this case, by setting aside this principle.

3. Though it is not proved, the agent remarks, "but it may fairly be pre-"sumed the Nawab's natural affection for the child would lead him to bestow "some such ornaments, &c. upon him;" and I would therefore consider the entries in his books as best and sufficient evidence he did so bestow those enumerated. From their size and character they are only adapted for a boy, and this goes to corroborate the truth of the entries about them; I therefore represent that what the agent remarks is all assumption, which is irregular. The assumption of the agent is also refuted by the 17th para. of this same decision, in which he states, "that there is no evidence whatever to prove the "Nawab ever gave the two valuable rings, the goolabdance and the silver box "claimed, to the child." Your honourable Board should take into your consideration the fact that since he did not award him these articles, it is evidently unjust to award those enumerated in the 16th paragraph on unsound conclusion, they being acknowledged not to have pertained to him according to the Mahomedan law.

4. It is not evident from what the agent has stated in the 16th para., what sort of right the deceased child Ameersodeen had over the articles therein enumerated, but according to the Mahomedan law, and they have not been established, to have been presented to him. In this manner these articles are not proved to have been a valid gift, and the agent himself has defined, in his 12th paragraph, which is essential to make a valid gift. It is, then, quite unjust to award these articles to Meer Jaffer Ali.

5. What has been stated above leaves no doubt that the amounts in question belonged to the late Nawab, while the agent has directed to award them to Jeffer Ali, fancying they were used for adorning the child, which is quite unjust, for a child cannot become the proprietor of such ornaments made by the parents so given by other people to put on him, such ornaments cannot be awarded to the father of the child as its heir, until the gift has been proved to be valid according to the principles of the Mahomedan law. I pray, therefore, that your honourable Board will be pleased to alter the decision come to by the agent, according the said ornaments belonging to the late Nawab to Jaffer Ali, and to direct a distribution of the same, with the other jewellery, &c. belonging to the estate of the late Nawab, that the true heirs may receive according to their legal claim.

27 June 1854. (SEAL.) (Signed in Persian.)

(True Translation.)

(signed) *W. H. Harrison*, A. G.

2 May 1856.

The appeal of Meer Kumroodeen's heirs against the decision being word for word the same as the above appeal of Padshah Begum, the agent has not sent a separate translation of it.

Surat Office of Agent for the Right honourable the Governor.

18 August 1854.

(signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Padshah Begum, widow of His Excellency the late Nawab of Surat, to the address of the Right honourable the Governor in Council.

THE acting agent for the Right honourable the Governor at Surat decided the claim preferred by Ameerool Nissa Begum to the two pieces of land situated in the village of Dhubhoolie, on the 7th April 1854, awarding them, as also the produce realised whilst under attachment, being *Rs.* 2,827. 8. to her. I am dissatisfied with this decision, and appeal against it, on the following grounds:

1. Amerool Nissa Begum claims this land under a deed of gift, dated Jashtshood, 8th Sumout 1883, or the 3d June 1828, asserting that from that date till Sumout 1891, A. D. 1834–1855, she received the product of the land in question, direct and afterwards, to the year of the Nawaub's death, through him. "In refutation of this claim, I have to represent that she asserts to have "received possession of the property in question from her having enjoyed the "produce only. The gift therefore is not valid according to the Mahomedan "law without seizin of the thing given. The enjoyment of the produce only, "were it proved, cannot make her the proprietor of the property. The subject "has been written in all the books of law, perusal of which will convince your "honourable Board that a gift without seizin is not valid."

2. The acting agent in his decision remarks, "Did the Nawab execute the "deed of gift produced at all, and if he had so, did he ever give it legal validity? "I believe he did both." In refutation, I have to represent that the agent makes this remark only from assumption, and not from any proofs. In administering justice, however, assumptions are of no avail, unless supported by substantial proofs.

3. The agent remarks, "The deed of gift bears, amongst others, the seals of "the late Nawab of Sucheen, of three members of the family of Idroos, of the "late Meer Kumroodeen himself, and of his father, Meershoodeen." Regarding this, I represent that such seals cannot be said to render the gift valid, the grounds of which assertion have been fully detailed in the last answer I produced in the case of the claim to the Daah Jelahee gardens, perusal of which will satisfy your honourable Board.

4. The agent also remarks, "Goolam Ali Kazee has deposed that he pre-"pared it, by order of his Excellency the late Nawab, and saw affix his own seal "to it, as well as write the word 'munzooror,' confirmed, under the same;" and Meetharam Dyarum has deposed, "that he witnessed it by his master's order. "I consider the above leave no room for doubt but that his Excellency the "Nawab executed the deed." In refutation of this, I have to represent that the depositions of Kazee Goolam Ali and Meetharam do not tally with one another. Meetharam's deposition does not show in whose presence the Nawab affixed his seal, and wrote the word in question. If the seal and word then were not affixed in his presence, the evidence of one witness only, Goolam Ali, cannot establish the fact: Government has long been aware that this Goolam Ali is a partisan of the claimants; it is therefore not surprising that he should depose in their favour. In administering justice, however, if the evidence of one witness and such seals were considered to have any weight in civil courts, much injustice would be done. In such courts documents produced in a case authenticated by the signature of registers, and witnessed by several persons, are not held sufficient evidence without other substantial proofs. Not taking these facts into his consideration, the acting agent, under a forged deed, has awarded quite contrary to the Mahomedan law so valuable a property, with its accumulated produce. This decision is quite despotic.

5. The

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5. The acting agent remarks, "According to the principles of the Mahomedan "law, immediate transfer of possession is essential to the validity of a gift. "In the deed mention is made accordingly that one Meer Essa, the son of the "late Khajé Kuhmdur, attended, and assumed possession on the spot on behalf "of the Amerool Nissa Begum. This person is dead, and that he did what is set "forth is not in evidence." In refutation of this, I represent that, as acknowledged by the agent, it being not established, the property was transferred to the possession of the donee, the gift cannot be said to be valid without such possession: it is therefore evidently unjust to decide as the agent has done.

The agent remarks, "From and after the date of the deed, the produce of "the land in question does not appear in his Excellency the Nawab's books "till Sumout 1891, after which, though first credited to him, it is again debited "as paid to the Begum." In refutation of this, I represent that the Nawab's dufters are all irregular and untrustworthy, and there is no doubt the reappearance of the produce in the Nawab's accounts, after the year Sumout 1891, is fraudulent, as the Nawab himself declared in the lists which he sent in to the agent in 1835 and 1838, that this property was his own, which evidently proves the entries in the Nawab's accounts, and the deed of gift itself to be fictitious.

7. The Agent, after stating that the produce in question was paid to the Begum year after year till Sumout 1897, remarks:

"Further it appears the first of the lists alluded to was sent in to the Agent, "consequent on a call made on his Excellency on the 17th November 1832, "and repeated on the 18th May 1835, pursuant to the decision conveyed in "the Government letter, as per margin, under which the produce of his Excel-"lency's ancestral possessions was to be admitted into the city of Surat free of "town duty, and the second was simply an amended list of those possessions "sent in as detailed in the correspondence, ending with the agent's letter to "Government, No. 68, of the 25th October 1838; I think it was not unnatural "that his Excellency, although he had parted with the proprietary right therein, "should still include the land in dispute in the above lists, looking on his own "and his wife's rights, as then under discussion, as indivisible." In refutation of this, I have to represent, that this remark of the agent is wholly assumption. It is a great pity the agent should, as above quoted, consider the deed valid, while it is prescribed by Mahomedan law that tender, acceptance, and seizin are essential to make a gift valid. This is a mistake of the agent. The deed of gift has not been executed according to the Mahomedan law, it not being in the name of the Nawab, declaring that he presented or gave such a thing, the writer of the deed declares that the Nawab presented it, which shows that the requisitions of the law, tender, acceptance, and seisin, have not been complied with. Out of these three, the agent acknowledged one, the immediate transfer of possession, to be essential to the validity of a gift. This transfer of possession has not been established, and from his not having mentioned anything about the other two requisitions, it is evident the deed of gift has not obtained legal validity; the agent, considering her enjoying the produce as sufficient to show the possession was transferred to her, Amerool Nissa Begum. She did not, however, enjoy the produce up to the date of the Nawab's death, and the proofs produced in connexion therewith are fraudulent, as above specified. The agent, considering the genuine proofs produced by the lists sent, in 1835 and 1838, by the Nawab, declaring the property in question as his own, still thinks that the rights of the Nawab, and of his wife, cannot be parted. It was, however, not difficult for the Nawab to include the property in those lists with the right that he had, proprietary right over it, but that he presented it to his Begum. In the absence of this, it is evident the land in dispute belonged to the Nawab, and no doubt is left that it was in the Nawab's possession up to his death.

8. The agent further remarks: "I do not think his having so included it suf-"ficient to refute the evidence adduced to his having before given it to his wife, "the less so that he continued afterwards to pay over the produce to her. In "refutation of this, I represent that the Nawab never paid her the produce in "question, nor did he transfer possession. The only evidence as to his paying "the produce is certain entries in the Nawab's dufters, which was untrustworthy. "I have explained this subject very fully in the last answer I produced in this "case, as also in that in the case of the claim to the Nugiena Bag, and in my "appeal it is therefore needless to write any more about it here."

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9. The agent also remarks—"I think the fact of the produce being debited "as above in favour of the Begum, corroborates her assertion that she had been "previously wont to receive it direct. The witnesses produced by her have "also deposed that she did so. On the whole, I consider it established that "his Excellency carried out the requirements of the Mahomedan law, and "separated the land claimed from his possessions, and made it over to Amerool "Nissa Begum at the time of the gift." In refutation of this, I represent that this remark of the agent is quite unjust, as the requirements of the Mahomedan law tender acceptance, and seisin have not, as above stated, been complied with at all, although the agent was aware of these requirements, and has alluded to them in several places, yet he presumes that "his Excellency carried out the "requirements of the Mahomedan law," which is wholly unjust.

10. The land in question was managed by and in the possession of the Nawab, and its produce enjoyed by him up to the date of his death, to prove which, cultivations accounts for Sumout 1891, 1892 and 1895, were produced; and the agent also remarks that this is not denied by Amerool Nissa Begum. This is, therefore, an acquiescence on the part of Amerool Nissa herself, that the property in dispute was in the possession of, and under the management of, the Nawab, and that its produce was enjoyed by him. The requirements of the Mahomedan law have consequently not been carried out; and, as above stated, the payment of the produce only, if such payment was ever made, cannot render the gift valid.

11. Regarding the two lists I have recorded of the Nawab's landed property, forwarded by him to the agent in 1835 and 1838, in which the land in dispute is entered as the Nawab's, the agent remarks—"If, however, his Excellency "ever gave possession of it in A. D. 1828, to Ameerool Nissa, as I have held "proved, that it was not competent to him to resume it, the gift was "irrevocable; therefore this subsequent mention of the land as his own, "would not invalidate the present claim."

12. Being filled with regret what the agent remarks, I represent to your Honourable Board, that although the agent seems to have been, as above stated, fully aware of the requirements of the Mahomedan law in regard to gifts, it is very strange that he sets aside the acknowledged part of the property being in the Nawab's possession and management, and considers the evidence produced of irregular and forged accounts, and the depositions given by Ameerool Nissa's own dependents as establishing the validity of the gift. If your Honourable Board examine these proofs, you will be convinced of the injustice of the decision come to by the agent.

13. Under the above agreements, I pray your honourable Board will be pleased to reverse the decision of the agent, awarding the two pieces of land with *Rs.* 2,887. 8., being the accumulated produce whilst under attachment, and including it with the other property of the late Nawab, direct them to be distributed among the legal heirs, that so by administering justice no one may suffer loss.

27 June 1854. (Signed in Persian.)

(Seal.) (True translation.)

(signed) *W. H. Harrison*, A. G.

The appeal of Meer Kumroodeen's heirs against this decision, being word for word the same as the above appeal of Padshah Begum, the agent has not sent a separate translation of it.

Surat Office of Agent for the Right honourable the Governor.

18 August 1854. (signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Padshah Begum, widow of his Excellency the late Nawab of Surat, to the Address of the Right honourable the Governor in Council.

THE acting agent for the Right honourable the Governor at Surat decided the claim preferred by Amerool Nissa Begum to a garden called Afzool Bag, on the

the 7th April 1854, awarding it to her. I am dissatisfied with this decision, and appeal against it on the following grounds: 2 May 1856.

1. The acting agent, in the 6th paragraph of his decision, seems to have been satisfied, from the depositions of Nazee Goolam Ali and the Deewan Meetharam, that the Nawab executed the deed of gift. This conclusion of the acting agent is unjust, inasmuch as Nethoram and Goolam Alee do not depose to having been present. At the same time, their depositions therefore cannot be said to correspond; Meetharam only deposes to having witnessed the deed, by the Nawab's order, while Goolam Alee deposes he prepared the deed, and saw the Nawab affix his seal to it, and write the word "munzoor," "confirmed," under the same, at which time he does not say that Meetharam was present. The agent also remarks on several seals on the deed of gift. If I reply in detail in refutation of these remarks, it will occupy much space; but I beg to refer your honourable Board to my last answer in the case of the claim to the Nugeena Begum, which this subject is fully mooted, and which will convince your honourable Board that the conclusions of the agent above referred to are unjust.

2. The Agent alsore marks, in his 7th paragraph, "In the deed mention is "made that his Excellency separated the garden in question from his private "possessions, and made it over to Amerool Nissa Begum, Meerza Abdoolla Beg "attending to receive the same on her behalf; whether the latter did as repre-"sented, or not, is not in evidence." It appears from this, that the possession of the thing given is not proved to have been taken according to the Mahomedan law. This gift, therefore, cannot be considered to be legally valid.

3. The acting agent does not show, in his decision, that the Nawab ever tendered the gift in question, or that Amerool Nissa Begum accepted it. The deed of gift also under which the property in dispute is claimed is not written in the name of the Nawab, but in that of the writer, the hazee. The gift cannot be said to be valid unless it has been made by the proprietor of the property, it having been defined in all the books of Mahomedan law, that tender, acceptance, and seisin are essentially necessary to make a gift legally valid. The word implies the donor should say, "I have presented, or given, or made you the proprietor of such a thing." The word acceptance implies that the donor should say, "I have accepted such a thing;" and the word seisin implies, that the possession of the thing should be transferred from that of the donor to that of the donee at the time of making the gift. This gift, therefore, has not been made according to the provisions set forth in the 21st line of the 700th paragraph of the book Hidayia. The Agent, not considering this legal objection, remarks, "he is satisfied the Nawab executed the deed of gift." This is therefore unjust.

4. The agent, in his 7th paragraph, remarks, "Five witnesses depose that "Amerool Nissa Begum enjoyed the produce of the Afzool Bag; and the fact that "nothing is credited in his Excellency the Nawab's books on that account from "1830, goes to confirm their assertion." In refutation of this, I present that the agent considers the depositions of Amerool Nissa Begum's own servants as establishing the fact of her having enjoyed the produce; she has, however, never received the produce in question; had she on any account received it, that alone cannot establish the legal validity of the gift, as, according to the Mahomedan law, a gift cannot be said to be legally valid unless its provisions as required by the three phrases above described are complied with; receiving the produce alone, for some reason or other, cannot establish the validity of a gift as the law requires; the property given should be made over, and not the produce of it. A quotation from the Mahomedan law on this subject has been produced in the last answer which I gave to the claim of Doah Illahee, and will convince your honourable Board that the decision which the agent has come to is quite unjust.

5. The agent, in the same paragraph: "It seems to have been made an "exception to the general rule in this respect, the produce of other gardens "having been, since 1834–35, first carried to credit, and then debited as paid "to the donee. The reason assigned for this is, that this garden was not "rented out, but managed by malees kept for the purpose; for which malees, now, "however, it appears, his Excellency the Nawab paid 50 rupees a month, being "debited in his accounts under that head. This is conclusive, that the garden "in dispute was in possession of the Nawab up to the date of his death; as the

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" malees were paid by the Nawab, it appears the garden remained under the " Nawab's management." Although these facts are apparent, from what the agent remarks, he very strangely and illegally awards the garden to Amerool Nissa Begum, with its produce collected, while under attachment after the death of the Nawab.

6. The above proves that the deed of gift was not executed according to the Mahomedan law, and that Amerool Nissa Begum had no claim on the garden in question up to the Nawab's death. The lists forwarded to the agent by the Nawab in 1835 and 1833, containing all the property that pertained to his Excellency, evidently show that the garden in dispute belonged to the Nawab. Notwithstanding this, the remark of the agent for not attaching any weight to the fact of his entering this garden in those lists, is greatly to be regretted; such standard documents, authenticated by the Nawab's signature and seal, declaring the property to pertain to him, and to have been in his custody up to the date of his demise, documents which have been in the agent's charge, and which have been considered as evidences in many disputes before Government, are now considered as having no " weight;" such proofs, which wholly invalidate the gift, are set aside before the verbal evidence of persons who are undisputed, by servants of Ameerool Nissa Begum, and before factitiously got up accounts, which have been held by a late agent, and by your honourable Board, to be of no weight; the decision, therefore, awarding the Nawab's property under a deed of gift not executed according to law, in the name of the Nawab, but fraudulently prepared, to one who is not entitled to have it, is evidently despotic, and greatly detrimental to the legal heirs of the Nawab.

7. Taking into consideration the above arguments, I pray your honourable Board will be pleased to annul the claim preferred by Amerool Nissa Begum to the said Afzool Bag, and altering the decision of the agent, direct him to award it, with the other property, among the real heirs.

27 June 1854. (Signed in Persian.)

(Seal.) (True translation.)

(signed) *W. H. Harrison*, A. G.

The appeal of Meer Humrooden's heirs against this decision, being word for word the same as the above appeal of Padshah Begum, the agent has not sent a sparate translation of it.

Surat Office of Agent for the Right honourable the Governor.

18 August 1854. (signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Padshah, Begum of his Excellency the late Nawab of Surat, to the Address of the Right honourable the Governor in Council.

AMEROOL NISSA BEGUM claimed the Dadh Illatree Bag Hulan and Khoord (large and small), which claim was decided by the acting agent for the Right honourable the Governor at Surat, on the 7th April 1854, awarding her both the gardens, together with their produce, accumulated during the time they were under attachment, being *Rs.* 5,662. 4. 4. I am dissatisfied with this decision, and present the petition of appeal to your honourable Board as under:

1. The acting agent, in remarking on the deed of gift framed in 1852, under which this property has been claimed, states, " The deed bears the seals of " two of the princes of Delhi, with whom it was at one time contemplated " to form a matrimonial alliance for the Nawab's daughters of the bukshu " of the late Meere Shumshoodeen, and of two of the family of Jelroos." The agent has considered this amply sufficient proof. I have, therefore, to represent that the validity of a gift of such valuable property should be examined into, in conformity with the Mahomedan law, which has been wholly neglected in the present case.

2. In the same paragraph, the agent alludes to the depositions given by Kazee Goolam Ali and by Meetharam Dewan, considering them as being amply

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amply sufficient to establish the execution of the deed. Since the agent has received the seals of the said persons and the depositions of Kazee Goolam Ali, and of Meetharam, as establishing the validity of the gift, I am under the necessity of bringing to your Honourable Board's notice the following explanations:—

3. Kazee Goolam Ali has deposed that he prepared the deed of gift by his Excellency the Nawab's order, and saw him affix his seal thereto, and write the word "confirmed" (Mumzool) and Meetharam, as deposed; he witnessed it by the Nawab's order. Your Honourable Board should now consider that there is but one witness, Goolam Ali, who deposes to having seen the Nawab affix his seal and write the word under the deed of gift; he was not present when Meetharam witnessed it, nor was Meetharam present when the word was written on the deed; these two witnesses cannot be said to corroborate each other, inasmuch as they depose to being present at different times. Kajee Goolam Ali is also a partisan of Meer Jaffer Ali and Ameerool Nissa, which fact is well known to Government. Meetaram is also their partisan, and is one of their counsellors since the commencement of the inquiry into this case, which he acknowledges in his own deposition. The evidence, therefore, which these witnesses have given is not to be trusted; the agent has nevertheless viewed their evidence as being sufficient to establish the execution of the deed. If such proofs, however, are acknowledged to establish the validity of gifts, much injustice would be committed.

4. The Agent, in his seventh paragraph, also remarks: In the deed, mention is made that Meer Eesa, the son of Waje Kalunda, attended, and received possession of the property in dispute at the time, and on behalf of the donee. This person is dead, and whether or not he died as represented is not in evidence. This remark of the Agent renders the opinion expressed by him in the preceding paragraph on the depositions of two witnesses as being "sufficient" worthless, as complete seisin of the property is not proved according to the Mahomedan law. This gift, therefore, cannot in any respect be recognised.

5. It is a matter for consideration for your Honourable Board that this gift has not been executed according to the Mahomedan law, wherein it is defined that tender, acceptance and seisin must be had to make a gift legally valid tender. This word is thus defined: when the donor informs the donee that he makes him a present of such a thing, or gives it to him, or makes him its owner, then it is called "tender;" when the donee says that he accepts (the present of) such a thing it is called "acceptance;" when the possession of the thing is transferred from the donor to the donee, it is called "seisin." A gift can only be held legally valid if these requirements are complied with.

This is written in the 21st line, 700 page, of the book called Hielaya. The gift in question was not made according to this law, as the deed does not show that the Nawab was the donor, nor is it executed in the name of the donor. The property was also not seized by the donee till the date of the Nawab's death. The deed of gift clearly shows that it is written in the name of the writer, and such representation by a third person cannot be said to make a gift legally valid. The decision, therefore, awarding the gardens in question to Ameerool Nissa is entirely opposed to the Mahomedan law.

6. In his 7th paragraph the Acting Agent remarks:—"The produce of the "said property is, however, excluded from his Excellency the late Nawab's "accounts for the years Summut 1889 and 1890 (A. D. 1832–33 and 1833–34). "In Summut 1891, A. D. 1834–35, it is again credited therein; but year after "year it is also debited as paid to the Begum, as per margin. During the time "mentioned, his Excellency appears to have realised from the property only "*Rs.* 143. 12. more than he paid away. Other *Rs.* 729. 14. were realised for "the years Summut 1897 and 1898, which have not been paid to the Begum; "but his Excellency the Nawab's sudden death in the latter year sufficiently "accounts for this, it having been his custom always to pay the collections in "arrears; thus those for Summut 1897 would not be due till Summut 1898, "or those for Summut 1898 till Summut 1899. In explanation of the non-"payment of the *Rs.* 143. 12. above alluded to, it is asserted the money was "self-appropriated by the karkoon employed to collect it in Summut 1894. "This may or may not have been; but, making allowance for the payment of

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" only half the usual sum in that year, the average annual amount handed over " to the Begum exceeds the average annual collections since the property has " been under attachment. Besides the above, it is also in evidence that the " rent of the house adjoining the gardens in dispute was handed over to the " Begum direct, having been collected on her behalf by the person who col- " lected her husband the Nawab's rents for other like houses. I consider the " above quite sufficient to establish that his Excellency the Nawab gave the " deed produced legal validity by separating the property in question from his " own, and making it over to his wife at the time of presenting it to her; and, " further, that he never afterwards intentionally appropriated to himself any of " the proceeds thereof." " In refutation of this, I have to represent that it is " evident from what the Agent remarks that the produce for the years A. D. " 1832-33 and 1833-34 is not entered in the Nawab's account-books. These " accounts are not, therefore, to be trusted; as how can the produce of a pro- " perty which has been once excluded from the accounts be re-entered in the " same? The reasons for excluding and reincluding the produce are also not " explained in those books. Meerza Mahomed Ali Beg laid a claim against the " Nawab's estate under the same account-books, which was disallowed him by " the late agent, Mr. Frere, on the ground of those accounts not being trust- " worthy. This decision was also sanctioned by your Honourable Board. The " acting agent, in the eighth paragraph of his decision on the claim to the " Nugeend Bag, also remarks, ' The Nawab's accounts are not regular.' This " remark, as well as the decision the late agent above referred, undoubtedly " establish the Nawab's dufters, or being useless as evidence. The Nawab's " dufters remained in the possession of Meer Jaffer Ali and Ameerool Nissa Be- " gum for three months, during which period they fraudulently caused the Nawab's " retainers, who are, up to this date, under their control, to make such altera- " tions in them as they pleased. They were, however, not enabled to prepare " regular accounts, which show that they are forged; the acting agent has, " nevertheless, awarded property, the dispute, to Annerool Nissa Begum, under " their account-books, stating that the produce has been paid to her." This decision is, therefore, opposed to the Mahomedan law about making gifts.

7. The Acting Agent considers this gift valid, on the ground of its appearing from these forged account-books that the Begum received the produce of the property in question; but although she really received the produce in question, yet this alone cannot make the gift valid according to the Mahomedan law, and is therein defined that proprietorship of the thing given, and not of its produce, is necessary. If any produce or thing be received, it cannot make the recipient its owner. The passage of the law on the subject has been quoted by me in the 8th paragraph of my last answer, produced in the case, which will convince your Honourable Board that this claim has been fraudulently referred, with the sole view of causing loss to the rightful owners.

8. The Agent also remarks, that it is also in evidence that the rent of the houses adjoining the gardens in dispute was handed over to the Begum direct. This remark of the Agent is founded on the evidence of one witness, Kimutram, who is only produced during the present investigation. What this witness deposes is not true. Had it been so, this witness would have been produced when Sir R. K. Arbuthnot investigated her claim to the gardens in question; failing this, it is evidently proved the evidence given and the book produced by this witness are false. It is therefore apparent that the decision of the Agent, awarding her the property in dispute in opposition to the Mahomedan law, and considering such false evidence and such false accounts trustworthy, is unjust.

9. The Agent in his 8th paragraph remarks: "The lists of his landed pro- " perty sent in by the Nawab to the Agent in A. D. 1835, and again in A. D. " 1838, in which the gardens in dispute are entered, have been recorded, as " also a memorandum of property belonging to her which had been attached, " sent in by Amerool Nissa Begum in 1844, in which these gardens are not " entered; but I attach no weight to these." I therefore represent that this remark of the Agent is wholly improper; as, had he set forth fully regarding these proofs, the decision would not have been passed in favour of Almerool Nissa Begum; but the Agent, putting these public proofs and the provisions of the law all aside, has come to quite an illegal decision. I have therefore briefly stated

stated above, in the hope that, after examining them, your Honourable Board will be pleased to alter it. 2 May 1856.

10. The lists which the Nawab sent to the agent in 1835 and 1838 contain all the property that belonged to the Nawab, on reference having been made to him to that effect. Had the property in question pertained at the time to Meerool Nissa Begum, he would have so mentioned in those lists, and the non-statement is as good as a declaration by the Nawab, after the date of the deed of gift, that the property in dispute belonged to himself, and the style of the deed itself, which does not appear to have been executed by the Nawab, undoubtedly nullifies the validity of the gift.

11. As regards the memorandum sent in by Amerool Nissa Begum to the Agent in 1844, notifications were issued by Government to the effect that all who had any claim against the late Nawab's estate should prefer them within the period therein specified. In conformity with this notification, Ameerool Nissa Begum sent in her petition, and with this petition she sent in the memorandum above referred to, which contains all the property that pertained to her. In this memorandum Kadree Bag Duria Mehel and Dhobre Gutta were also inserted; but in the present inquiry before the Acting Agent he rejected her claim on these, while he awards her these gardens of Daeth Illahee, not considering that it is not included in that memorandum. This is evidently unjust, as had she received the property in dispute in gift, and had its produce been paid her, she would not have failed to prefer her claim to so valuable a property at once. This undoubtedly shows that the deed of gift is a forged document. Notwithstanding the above-mentioned substantial proofs, this property has been awarded to Ameerool Nissa Begum, which is evidently unjust.

12. Taking the above-mentioned proofs into consideration, I pray your Honourable Board will be pleased to alter the said decision, awarding to Ameerool Nissa Begum the said gardens, as also the houses adjoining, and the produce realised therefrom, being *Rs.* 5,462. 4. 4., and distribute them, with the other property belonging to the estate of the late Nawab, among his legal heirs, that they may not sustain any loss.

27 June 1854.

(L. S.)

(signed) in Persian.

(True translation.)

(signed) *W. H. Harrison*, A. G.

The appeal of Meer Kumroodeen's heirs against the decision, being word for word the same as the above appeal of Badshah Begum, the Agent has not sent a separate translation for it.

Surat, Office of Agent for the Right Honourable the Governor, 18 August 1854.

(signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Padshah Begum, Widow of his Excellency the late Nawab of Surat, to the Address of the Right Honourable the Governor in Council.

The Acting Agent for the Right Honourable the Governor at Surat decided the claim preferred by Meer Surfraz Ali, as guardian of his grandson Meer Ibrahim Ali, to the Phool Waree, on the 7th April 1854, awarding it to him, as also *Rs.* 3,646. 5. 2., the produce of the garden while under attachment. I am dissatisfied with this decision, and appeal against it under the following grounds:—

This garden is claimed for Meer Ibrahim Alee as having been presented to his father, Meer Akbur Ali's first wife, Nujeebool Nissa Begum, by the late Nawab. In reply to this, I represent that Meer Ibrahim Ali has no claim to the property of the late Nujeebool Nissa Begum.

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If Meer Surfraz Ali claims to inherit the property for Meer Ibrahim Ali, as being heir of Meer Akbur Ali, he cannot do so, as Meer Akbur Ali has no claim to it whatever, Nujeebool Nissa Begum having died during the lifetime of the late Nawab. Proofs of this assertion will be described below. In support of the claim, however, a deed of gift, dated the 8th Jeslit sood Sumunt 1833 (3d June 1828), and three witnesses, as also copies of certain entries in the late Nawab's accounts have been recorded, and it is asserted Nujeebool Nissa Begum enjoyed the produce of the garden in question from the date it was presented to her to that of her death, which took place in Falgoon Sisnut 1896, or March 1840, during part of which time she received it direct, and the remainder of the time through the late Nawab. In reply to this, I represent that the deed of gift alluded to is not genuine, and that the circumstances have not happened as asserted, Nujeebool Nissa Begum not having enjoyed the produce of the garden in dispute up to the date of her demise.

In regard to the execution of the deed, the Agent in his 7 para. remarks, "It is of the same date as that under which Meer Jaffer Ali claims the Nugeen-"a-Bag as having been prescribed to his late wife, and that under which "Ameerool Nissa Begum claims the land situated in the village of Dubhalie as "having been presented to her. It seems to me that this is *primâ facie* in favour "of its validity, since whilst about it one can so readily understand the feeling "that would induce the Nawab to present something simultaneously each to "his wife and two daughters. The direct proof of the validity of the deed is "exactly the same as in the case of the Nugeen-a-Bag. This bears, amongst "others, the seals of the same respectable individuals that deed does. I am "satisfied his Excellency executed this deed, as he did that." This decision of Agent is wholly opposed to Mahomedan law, as I have fully shown in my appeals on the claims to the Nugeen-a-Bag, and the lands in Dubhalie; more particularly in the last answers I presented in those cases, perusal of which will satisfy your Honourable Board. It is therefore needless to write any more about it here; I represent, however, that Nujeebool Nissa Begum having died a year and a half before the death of the late Nawab, the latter was, according to the Mahomedan law, entitled to, were it the half of the property left by the former. If the Agent, therefore, considered, as above, the gift to be valid, it was necessary she should have decided to award half of her property to her husband Mear Akbur Ali's heir, and the other half to the two heirs of the late Nawab. His decision would then have been said to conform to the law, instead of being, as it now is, opposed to it.

The Agent in his 8th para. mentions some fanciful stories about the seal of Meer Kumroodeen; this circumstance has nothing to do with this case. If no witness depose to having afterwards attached the seal of Meer Kumroodeen, it is quite contrary to the principles of justice to draw such inferences, when it is evident that the deed in question is dated before that which the seal bears, and to consider the suspicious deed to be valid. It is also not established the Nawab signed and sealed the deed in question, and therefore it is wholly opposed to the Mahomedan law to consider it proved. Your Honourable Board will be convinced of this from what I have remarked on the subject in the case of the claim to Nugeen-a-Bag.

The Agent in his 9th para. remarks, "The proof that the Nawab gave legal "validity to the deed, is also exactly the same as that recited in the case of the "claim to the Nugeen-a-Bag;" and from the style of the deed, the Agent also remarks, "Nujeebool Nissa Begum being his child, the gift was perfected by "the mere declaration. But she being only nine years of age at the time, it is "specified further in this deed, as in that, the Nawab dispossessed himself, and "assumed possession of her property, given as her guardian." Regarding what the Agent remarks, that the gift was perfected by the mere declaration, I represent that the style of the deed does not imply that it was written in the name of the Nawab; the writer of the deed declares, that the Nawab made the gift, which cannot be considered as complying with the requisition of the Mahomedan, (tender, acceptance, and seisin): the conclusion of the Agent is therefore wholly incorrect.

The Agent also remarks, that the produce of the garden was struck out of the Nawab's accounts until the year Sumarit 1891 (A.D. 1834–35), when it is afterwards year after year again debited as paid to Nujeebool Nissa Begum. The Nawab paid more than was realised, as the Nawab's dufters show *Rs.* 1,509. 8.

were

2 May 1856.

were realised from this property in five years, while 1,513 rupees have been debited as paid to Nujeebool Nissa Begum as the produce of four years. Why or how this was done is not satisfactorily established. In refutation of this, I represent that as the Agent consents to having been debited as paid to Nujeebool Nissa Begum in four years more than was realised in five, it cannot be said that she enjoyed the produce of the garden in question, as its own. He may give to his child a part of the produce of any of his property for her maintenance, but that cannot make the child the proprietor of the property in question. Had she received the produce, yet it is not proved she obtained possession of the property when she came to age; without seisin, therefore, the gift cannot be valid. It is again a matter for consideration, that had produce been once excluded from the accounts, why should it be again included. This shows that the Nawab's dufter is irregular and untrustworthy, and that the produce must have been fraudulently struck out and again debited therein. This gift cannot therefore be said to have been made conformable to the Mahomedan law, and the property to have been legally transferred to the claimant's possession.

The Agent in his 10th paragraph, remarks, "The Nawab retained the "management of this garden after Nujeebool Nissa Begum's death, as also prior "to that event." On this, I represent that as there is no doubt the Nawab retained possession of the garden from the date of the gift to that of his death, this alleged gift cannot be said to be legally valid, she having not been put in possession of the garden, although she became of age, was married, and had children; this leaves no doubt that the property in dispute was wholly in the Nawab's possession.

Regarding the proofs, I have recorded such as the lists sent in by the Nawab, to the Agent, in 1835 and 1838, a lease by the Nawab, &c., the Agent remarks, "I have expressed my opinion in the case 1," and further says, "one witness "indeed has stated that his Excellency ordered the same to be retained for Meer "Akbur Ali; but had all this been different, it could not have invalidated the "present claim, the gift in question having been perfected simply in the "declaration, and being irrevocable." In refutation of this, I have to represent that in this case it has not been established, the Nawab ever verbally declared to have made the gift, nor has the deed of gift been executed in the name of the Nawab. If such is the case, the gift cannot be said to have been in anyway perfected. The Agent has made this remark according to his own fancy, your Honourable Board should therefore take these circumstances into your consideration. Had the Agent considered the gift to be valid, although in failure of all proofs, yet he should have taken into consideration the law that would award to the Nawab half the garden; leaving this aside, he has awarded the whole of the garden to Meer Akbar Ali's heirs, who have no connexion with the Nawab; this is quite unjust, and should be rectified by your Honourable Board.

Taking into consideration the above arguments, I pray your Honourable Board will be pleased to annul the decision, awarding the garden in dispute, as also *Rs.* 3,646. 3. 2., the produce realised while it has been under attachment, to Meer Akbar Ali's heirs, and distribute it with the other property belonging to the estate of the late Nawab among the legal heirs.

27 June 1854. (L. S.) signed in Persian.

(True translation.)
(signed) *W. H. Harrison*, A. G.

The appeal of Meer Kumroodeen's Heirs against this decision, being word for word the same as the above appeal of Padshah Begum, the Agent has not sent a separate translation of it.

Surat, office of Agent for the Right honourable the Governor, 18 August 1854. (signed) *W. H. Harrison*, A. G.

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2 May 1856.

TRANSLATION of an Appeal Petition of Padshah Begum, Widow of his Excellency the late Nawab of Surat, to the address of the Right honourable the Governor in Council.

THAT Meer Surfraz Ali, as guardian of his grandson, Ibrahim Alikham, claimed certain jewels, clothes, and other sundry articles, and the Acting Agent for the Right honourable the Governor, at Surat, in his decision dated 7th April 1854, awarded the whole of the property claimed to Meer Sarfraz Alie; I am dissatisfied with this decision, and appeal against it under the following circumstances:

1. The Agent, in his decision, writes that the jewellery is valued at *Rs.* 62,183. 12. The other articles have not been valued, objections having been raised to strangers even looking on some of the clothes, and the miscellaneous articles being of comparatively trifling worth; that these are claimed as the exclusive property of the late Aber Akbur Alie, and do not form part of the late Nawab's estate, to which alone the Government is authorised to administer, and over which only has it any special jurisdiction, as the disputed jewellery, clothes, and most of the miscellaneous articles, were given in dehej by the late Nawab of Surat to his daughter Neyeebool Nissa Begum, the first wife of Akbur Alee; that the other jewellery, clothes, &c. with the exception of such of the late Meer Akbur Alee's own wearing apparel as may be among the lot, and a few small silver articles made up for their deceased child, were given to this lady by her husband and his friends, and that the whole of this was in the possession of Meer Akbur Alle at the time of the late Nawab's death. In reply to this, I represent that all these statements are incorrect, as the possession of this jewellery was never transferred to Meer Akbur Alee, and while Nujeebool Nissa Begum lived she used them as property in deposit, and after her death they were sequestrated by the Nawab, and are still in the possession of the Agent on behalf of the Nawab. The decision, therefore, awarding the same to the heirs of Meer Akbur Alee, who have no connexion with the Nawab whatever, is evidently unjust as detailed below.

2. The Agent states that the questions for decision are whether the property in dispute belonged to Nuzeebool Nissa Begum, and a portion of it constituted her dehej or not; secondly, was the property when attached in the possession of Meer Akbur Alle, or did it form a part of the Nawab's estate? Thirdly, has it been proved that Nujeebool Nissa Begum, when alive, gave all her property to her husband or not; and whether the custom in the Nawab's family was such as has been asserted, as regards the father not taking any portion of his daughter's property?

3. The Agent, in his 6th para., states that before proceeding to the consideration of these questions I may premise that dehjis are of two kinds, that which is as it were lent for use, and that which is given in perpetuity. The ownership of the former rests in the father or his heirs, on the death of the daughter to whom it was so lent; the latter pertains permanently to the daughter as her property. Also, that according to the Mahomedan law the husband on his wife's death, childless, succeeds to one half of her property only, the rest reverting to the father, if, as in this case, he be then "alive." Regarding the first of these questions, as considered by the Agent, I represent that the Nawab lent the whole of the property in dehij to Nujeebool Nissa Begum, on her marriage, for use only, as the Nawab kept it in his possession in his own house, as well as his daughter and her husband, providing them with food and clothing, as has been proved in this case. The object in thus keeping his daughter's husband in his house, was that the whole of his property might not be given over to another's possession; and under this consideration the Nawab kept the said property in his possession, which clearly shows that this property was undoubtedly lent for use. Out of the two kinds of dehej which the agent has considered, this dehej is of the first kind, as being lent for use, and consequently forms part of the Nawab's estate. The Nawab's true heirs are therefore entitled to inherit it.

4. Regarding the other kind of dehij which the Agent has alluded to, I represent that this rule applies to a person who sends his daughter to her husband's house on her marriage, with the dehej, the husband providing for the daughter her food and clothing in her after-life, and the father not claiming a share in the

the said dehej on his daughter's death. The father, however, is still entitled to a share in it according to the Mahomedan law. The Nawab did not present his daughter the property under consideration in this manner, and Meer Akbur Alee never took Nujeebool Nissa Begum with the property to Baroda; he lived in the house of the Nawab from the time he was married to her, and at Nujeebool Nissa Begum's death, the property which had been lent to her for use was sequestered by the Nawab. Meer Akbur Alee came to Surat on the occasion of the 40th day after Nujeebool Nissa Begum's death, but went to Baroda again without taking any of the property with him, or even demanding a portion of it from the Nawab. Had this property been not lent for use, Meer Akbur Alee would have taken it to Baroda with him, but failing to do so, it clearly appears Meer Akbur Alee had no claim against this property, and no doubt can remain as to the Nawab's having lent it for use. The Agent's decision, awarding the said property to Meer Akbur Alee's heirs, is therefore evidently unjust, and quite opposed to the Mahomedan law and existing custom.

5. I have shown above that Nujebool Nissa Begum herself had no proprietary right over the property in question; how can then Meer Akbur Alee lay any claim to it? And if Meer Akbur Alee had no right to claim it, how is it that the Agent has awarded it to his heirs, who are not in the least connected with the late Nawab, and who have no right to claim it whatever? The Right honourable the Governor in Council should take this circumstance into his consideration.

6. The Agent, in his 7th paragraph, states that Nujeebool Nissa Begum was married to Meer Akbur Alee, on the 13th April 1834, and that she died during her husband's temporary absence at Baroda, on the 30th March 1840; that the said articles are proved to have belonged to Nujeebool Nissa Begum, and there are sufficient grounds to prove the rest with these to have pertained to her, and to have been given her by her husband and others; and as to certain toys which are adapted for boys, and the male wearing apparel, which are under attachment, the same reasoning would apply to them; and, considering where these articles were found, there can be no doubt the wearing apparel belonged to Akbur Alee, and the other articles to his wife, Nujeebool Nissa Begum's children, and their value being very trifling, separate account has not been taken of them. In reply to this, I represent that it has not been proved from the evidence of any witness that Meer Akbur Alee brought the wearing apparel alluded to from the house of his father; the small articles adapted for the child were also lent by the Nawab for use, they were not purchased by Meer Akbur Alee (with his own money); if this is not established by proofs, it is quite unjust to award these articles to Meer Akbur Alee's heirs from inferences only. Why did the opponents object to showing these articles? Had they really belonged to Meer Akbur Alee they would not have raised this objection. The object of their not showing these articles was, that they belonged to the Nawab. It is therefore quite unjust to award these articles to Meer Akbur Alee's heirs on reasonings from inferences, and not at all supported by proofs.

7. In the 9th paragraph the Agent remarks that five witnesses were examined; from the evidence of these it is not proved whether the seal on the doors of the rooms in which these articles were placed were affixed by his Excellency's order or not, but the circumstance was undoubtedly made known to him. To refute these statements I have to state that the Agent placed no confidence on the evidence taken in this case, the witnesses being friends and servants of Meer Jafer Alee; they have concealed the true facts and have given false depositions; notwithstanding this, their evidence establishes the property to have been in the Nawab's possession, and to have been sequestrated by him from the date of Nujeebool Nissa Begum's ziarut, three days after her death, by affixing his seal to the same. Had the Nawab possessed no proprietary right over it, why should he have taken it into his custody? The brother of Meer Akbur Alee, Meer Jafeer Alee, would have taken it into his possession, but failing this, there can be no doubt the property in dispute was in the Nawab's possession, and was lent for use only.

8. The Agent in the same para. remarks that the property in dispute was left in the house Nujabool Nissa Begum and her husband occupied for a short time before coming to reside with her father, the Nawab. In refutation of this, I represent that the Agent considers this circumstance as establishing the

2 May 1856.

claimant's right; this is not the fact, as the whole of the property in question pertained to the Nawab, and was lent for use. The building, durria mehel, also belonged to the Nawab, and when they came to reside in the building in which the Nawab himself lived, they brought with them those articles which were necessarily useful, and the rest remained in that building in the Nawab's custody, and have since been under the watch placed by the Nawab. In this way, this the Nawab's property remained in the Nawab's building in his possession. Had this property not been lent for use only, it would have been taken away from the durria mehel and deposited in Meer Surfraz Alee's own numerous buildings in Surat. This fully established the assertion that the property was lent for use only.

9. The Agent also remarks that the Nawab informed Meer Akbur Alee, at his deceased wife's foster mother's request, of what he had done as above, and bade him rest satisfied therewith; that the conduct of the Nawab on the occasion alluded to amounted, in the exercise of that despotic authority he had over his own household, to such a resumption of the property in dispute as would constitute it now part of his estate, subject to the Government's administration, or that his Excellency acted *bonâ fide* with the sole view to secure the said property for Meer Akbur Alee, its their undoubted rightful owner, when he might choose to send for it. This opinion of the Agent is not at all well founded. The letter of the 12th April 1841, has been considered as defining the custom of the Nawab's household. This letter was certainly a forged document, as many forged documents were produced to establish the custom of the Nawab's household, at the time when inquiries were instituted in connexion with the inheritance case, which were all set aside by the late Agent, Mr. Frere, who decreed a division of the estate among the heirs, according to the Mahomedan law. What the Agent remarks, that Meer Akbur Alee can send for the property whenever he chooses, is evidently a mistake; as Meer Akbur Alee himself could not go out of doors without the Nawab's permission, how could he have then sent for the property when he chose? Had this been the case he would not have failed to take away the property at his father's house; this proves that what the Agent remarks is quite unjust.

10. As regards the witnesses produced, the Agent himself remarks in his decision that "they are partisans of the claimants or Meer Jafeer Alee, there-" fore they are liable to suspicion; yet, if the facts be as they represent them, " they only are or were likely to be able to speak to them. The letter re-" corded is not Akbur Alee's." That the Agent further, in the same paragraph, expresses his opinion that the property in dispute must be regarded as part of the Nawab's estate; that it is singular Mer Akbur Alle should have left it, being so valuable, unclaimed, *i. e.*, for two years and five months from the date of his wife's death to that of the Nawab's. This consent of the Agent also undoubtedly shows that the property pertained to the Nawab.

11. From the depositions of the Nawabs of Cambay, Sucheen, and Baroda, the Agent remarks that "it is not the custom in families of the rank and position of the late Nawab to take back a daughter's dehej." In reply to this, I represent that these depositions have no connexion with the property in dispute, as the said custom could not be applied to those husbands of daughters who reside in the house of the latter's fathers; it may not be the custom of such respectable families to take back the dehej, but this property and the daughter who used it were never sent by the Nawab to the husband's native town, and into his keeping; they were retained in his house, under his control, he providing for her food and clothing; this custom therefore has no connexion with this case whatever.

12. I further beg to represent that since Meer Alee was married to Nujeebool Nissa Begum, and kept in the Nawab's house, he received a monthly allowance of 250 rupees from the Nawab; but on Nujeebool Nissa Begum's death, this allowance, as well as other provisions, was resumed, and that in like manner the whole of the property was confiscated. Notwithstanding this fact, the decision of the Agent awards it, and is unjust. There are many precedents of the kind in which father did not give back their daughter's dehej on their death in cases where the husbands resided in the houses of their wife's fathers. If Government is pleased to send for the opinions of the law officer of the Sirda Adawlut and of other learned Mahomedan inhabitants of Bombay, the

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Honourable Board will be convinced that the decision alluded to is opposed to the Mahomedan law, and contrary to the existing custom. 2 May 1856.

13. The Agent also remarks, that "the property in question should be given "up to Meer Akbur Alee's representative, and should the Nawab's heirs hold "they have a claim on him, their only remedy is by a civil action. Even then "it will be a primary matter for decision, whether, the Nawab not having "insisted on his rights whilst alive, the Adawlut can award them to his heirs; "whether, in fact, delay was not in his case tantamount to an acquittance in "the case of others." In refutation of this, I have to represent that what the Agent has remarked is evidently unjust, as the property in dispute was in the house of the Nawab, locked up in a room under his seal, and in every respect was held by him as being a part of his estate. What necessity, then, had he to insist on his rights thereto? It was necessary for Meer Akbur Alee to demand it, or to get it by a civil action from the Nawab, in whose possession the property remained. He could not do so while the Nawab was alive; but now, after his death, he has laid a claim to it, and the Agent does not say that as he did not demand it from the Nawab himself, the Agent was unable to do anything in his favour. Government administer to the estate of the late Nawab on his behalf, and it is their duty to take care of it, and to see that the property has been rightly distributed among his heirs. The decision therefore come to by the Agent, on the grounds that the Nawab did not lay any claims against it, and that his heirs should hold their claim by a civil action, is quite improper, and evidently unjust.

14. In paragraph 12 of his decision, the Agent remarks, that it may be the prevalence of the custom alluded to, and the meanness that might be held to attach to its infringement, as well as other considerations, deterred the Nawab from insisting on his undoubted rights alive, both as regards the property in dispute, and also Nujeebool Nissa Begum's "meher," of which he was entitled to half, but which has not been demanded or paid. The Nawab was not deterred as asserted; for as the whole of this property was and is in the Nawab's own possession, he had to demand it from nobody, much less was he deterred from insisting upon his rights thereto. Dehej and meher are given and taken back according to the Mahomedan law, and the Nawab has in this case acted according to that law; the dehej, as above stated, is therefore established to have been lent for use, and Meer Akbur Alee has consequently no claim on it whatever. *Rs.* 100,000 on account of meher or dower, have remained with Meer Akbur Alee, the Nawab, and his heirs are entitled to a half of it. The Agent does not inquire into the just and legal claim, and has order to file a suit in the Adawlut while he has decided as above with regard to the dehej, over which Meer Akbur Alee has no claim, and which is in the possession of the late Nawab. This decision is therefore evidently unjust.

15. The Agent also remarks, "Two witnesses have deposed it was specially "agreed at the time of Meer Akbur Alee's marriage, his wife's dehej was not to "be demanded back; but I distrust their evidence, and think it rather weakens "than strengthens the present case." Your Honourable Board will be convinced from this that witnesses to the above effect were produced with the intention of wrongfully obtaining the property in question. It also appears from the evidence of April Bahr and from a paper recorded, that Nujeebool Nissa Begum a year before her death presented this property to her husband. These two circumstances are opposed to one another, and leave no doubt that the Agent, although knowing them to be such, and taking into consideration the custom prevailing in other people's families, has decided quite contrary to the Mahomedan law.

16. Taking into consideration, therefore, the above circumstance, I pray your Honourable Board will be pleased to alter the decision of the Agent, awarding the property in dispute to Meer Surfraz Alee for Meer Abrahim Alee, and declaring it a part of the Nawab's estate, distribute it among the legal heirs, that their just claim may be satisfied.

Signed in Persian language.

(seal) *Padshah Begum*, widow of A. E., the late Nawab.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

2 May 1856.

The appeal of Meer Kumroodeen's heirs against this decision being, word for word, the same as the above appeal of Padshah Begum, the Agent has not sent a separate translation of it.

(signed) *W. H. Harrison*, A. G.

Surat, Office of Agent, &c., 18 August 1854.

(No. 211 of 1854.)

From *W. H. Harrison*, Esq., Agent for the Right Honourable the Governor at Surat, to *H. L. Anderson*, Esq., Secretary to Government, Bombay.

Sir, Political Department, dated 9 September 1854.

I HAVE the honour to forward herewith eight petitions of appeal, with their English versions, presented to me by Meer Morenoodeen Khan, the Bukshee of predecessor, on the several claims preferred against the estate of the late Nawab of Surat.

2. These appeals have been received, and are forwarded by me under the same circumstances as those of Padshah Begum transmitted with my letter, No. 197, of the 18th ult.

I have, &c.

(signed) *W. H. Harrison*, A. G.

Surat, Office of Agent for the Right Honourable the Governor, 9 September 1834.

TRANSLATION of an Appeal Petition of Meer Moreeroodeen Khan Wullud Meer Sudroodeen Khan to the Address of the Right Honourable the Governor in Council, against the Decision passed by the Acting Agent on the 7th April 1834, on the Claim preferred by Meer Jafer Ali, on behalf of Bukhtiarool Nissa Begum's Daughters, to the Nugeena Bag.

IN this case several entries from the dufters in Bukhtiarool Nissa Begum's name have been recorded; the Acting Agent holding these entries to have weight, has allowed this claim, as well as those of Anreerool Nissa Begum, on whose behalf also the same entries have been recorded; it is therefore necessary to represent that these dufters are not trustworthy, the grounds for which assertion are shown below.

The claimant asserts that the dufters from which the entries have been recorded are the Nawab's, which is, however, not true, inasmuch as they do not bear the seal or any mark of the Nawab, nor have they been written in the regular manner; these dufters also remained in the claimant's possession for several months after the death of the Nawab, as is acknowledged by witness, No. 42. All the Nawab's dufters and papers are not sequestrated, and a few that are could have been altered as much as the claimant desired before they were sequestrated. This was not a difficult task to perform, as the Nawab's retainers were all kept by the claimant under her control after his death. The dufters from which the entries are recorded are not established to be the Nawab's; they are not therefore trustworthy. Had the dufters been proved to have been the Nawab's, then even the entries therefrom are useless, as is shown in my first answer in this case.

Meerza Mahomed Ali Beg Baha, Mahomed Ali Beg Bahadoor, Ali Beg, karbarie of the late Nawab, prosecuted a claim to a very large amount against the estate of the Nawab before the late Agent, under those dufters which were sequestrated after the Nawab's death, and from which the claimant have produced the said entries; he also produced a bond, authenticated by the Nawab's seal and signature. The Agent, Mr. Frere, however, conducted the inquiry into the case by examining the Nawab's account-books, which having been established to be untrustworthy, he disallowed the claim. This decision was sanctioned by Government. Perusal of the correspondence on this subject will satisfy your Honourable Board.

I also urge your Honourable Board to examine the last answer I produced before the Acting Agent in this case, in which the reasons for disallowing the

claim

claim in question have been fully detailed, and which have not been wholly refuted by the Acting Agent. 2 May 1856.

I pray, therefore, your Honourable Board will, taking the above circumstances into consideration, be pleased to send for the proceedings from the Agent, and examining them, reverse the Acting Agent's said decision.

4 July 1854. Signed in Persian character.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

Translation of an Appeal Petition of Meer Mocenoodeen Khan Wullud Subroodeen Khan to the Address of the Right Honourable the Governor in Council, against the Decision passed by the Acting Agent on the 7th April 1854, on the Claim preferred by Meer Jaffer Ali Khan to certain Jewels.

The Agent has awarded to the claimant the articles enumerated in the 16th para. of his decision, on the following grounds: that two pearl necklaces were given, one by Ameerool Nissa Begum, and the other by Meerza Mahomed Ali Beg; that the other articles were made by the Nawab, as appears from the Nawab's dufters; from their size and character they appear to be adapted for a child, and they were also used to adorn him.

There is no doubt the articles were made by the Nawab's order, but their formal delivery by the Nawab to the child is not proved. If a person orders articles to put on any one, the latter's heir is not entitled to them after the death of the former. The person who orders the articles is their owner. If the maker wishes to take back any of those articles while the person for whom they were made is alive, he can do so. The decision of the Agent awarding the articles in his 16th para. is therefore illegal.

I pray, therefore, your Honourable Board will, taking the above circumstances into consideration, send for all the proceedings from the Agent, and, examining them, reverse the Acting Agent's decision.

4 July 1854. Signed in Persian character.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

Translation of an Appeal Petition of Meer Moeenoodeen Khan Wullud Mea Subrooden Khan, to the Address of the Right honourable the Governor in Council, against the Decision passed by the Acting Agent on the 7th April 1854, on the claim preferred by Ameerool Nissa Begum to the two pieces of Land situated in Dubholie.

If it is to be established, as the Agent supposes, the Nawab executed the deed of gift, it is not at all proved he made it over to Ameerool Nissa Begum, and possession of the thing by the donor is essentially necessary according to the Mahomedan law, which is not proved in the present case, while it is established the property in dispute remained in the Nawab's possession. It is therefore not proper to allow the claim set forth; certain entries from the dufters have also been recorded, and considered by the Agent as establishing the claimant's possession of the land in question. These dufters are not, however, trustworthy; grounds for which assertion have been fully detailed in my appeal, in the case of the claim preferred by Meer Jaffer Ale to the Nugeena Bay. It is therefore needless to repeat them here. I pray, therefore, your honourable Board will, taking the above circumstances into consideration, be pleased to send for the proceedings from the Agent, and examining them, reverse the Acting Agent's said decision.

4 July 1854. Signed in Persian character,
(signed) *W. H. Harrison*, A. G.

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2 May 1856.

TRANSLATION of an Appeal Petition of Meer Moeenoodeen Khan Wullna Meer Sudroodeen Khan to the Address of the Right Honourable the Governor in Council, against the Decision passed by the Acting Agent on the 7th April 1854, on the Claim preferred by Ameerool Nissa Begum to the Afzool Bag.

THE Acting Agent concludes Ameerool Nissa received possession of this garden, its produce not having been entered in the Nawab's account, and on the evidence of certain witnesses. This is not proper, as the witnesses produced are all servants of claimant. In other cases the claimant, having represented the property to have been in the possession of the Nawab, asserts she received its produce only; considering these representations it does not appear to have been proved she received possession, as there seems to have been no ground for supposing the Nawab made an exception in respect to this garden only. In the present inquiry it has come out the garden in dispute was in the Nawab's possession, leases having been executed in his name, and the servants employed to look over the garden paid by him; this fact the Agent acknowledges in his decision. If, then, it has been established the Nawab's executed deed of gift, it cannot thereby be concluded he delivered it over to Ameerool Nissa Begum. This garden is situated near the racecourse, and formerly belonged to Meeza Abdoolla Beg, from whom the Nawab took it for the purpose of seeing horse races, giving him in return property more valuable than that which he took, as is deposed to by the Nawab's servant Mohunlal. It is therefore impossible to think he could have transferred possession. A person who buys a property for his own amusement will make it over to another.

I pray, therefore, your Honourable Board will, taking the above circumstances into consideration, be pleased to send for the proceedings from the Agent, and examining them, reverse the Acting Agent's said decision.

4 July 1854. Signed in Persian character.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Moeenoodeen Khan Wullud Meer Sudroodeen Khan to the Address of the Right Honourable the Governor in Council, against the decision passed by the Acting Agent, on the 7th of April 1854, on the Claim preferred by Ameerool Nissa Begum to a House in Beegum Poord.

THE proof in this case, which the Agent has considered sufficient, is not so, but of two witnesses whom the claimant has produced, one deposes to have no recollection of the transaction, while the other, though he states himself to have some knowledge of it, deposes the Nawab gave the money. The memoranda which I have produced in this case, and in which Ameerool Nissa Begum does not claim the house as her own, are sufficient to show it pertained to the Nawab. Had the house in question not belonged to him, Ameerool Nissa Begum would not have failed to prefer her claim to it in these memoranda; what the Agent has remarked, in refutation of these memoranda, is therefore not in any respect sound. The reasons for this assertion having been given in my appeal in case of Duah Illahee, have not been repeated here.

I pray, therefore, your Honourable Board will, taking the above circumstance into consideration, be pleased to send for the proceedings from the Agent, and examining them, reverse the Acting Agent's said decision.

4 July 1854. Signed in Persian character.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

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2 May 1856.

TRANSLATION of an Appeal Petition of Meer Moeenoodeen Khan Wullud Meer Sudroodeen Khan to the Address of the Right Honourable the Governor in Council, against the Decision passed by the Acting Agent, on the 7th April 1854, on the Claim preferred by Amerool Nissa Begum to the Doah Illahee Gardens, Kulan and Khoord (large and small).

ALTHOUGH the deed of gift of these gardens may be, as considered by the Agent, valid, yet this cannot establish the garden was in her possession, possession of the thing by the donee being, according to the Mahomedan law, essentially necessary, which is not proved in respect to the case under discussion. Moreover, the deposition of witness number 30, who deposes to having been in the habit of giving over the rents collected by him of the gardens in question to the Nawab, shows that the property was in the Nawab's possession.

The Acting Agent, holding certain entries from the Nawab's dufters, which have been recorded by the claimant, and in which the name of the claimant is stated trustworthy, has considered the property in dispute was in her possession. The reasons for not depending on the Nawab's account-books having been fully detailed in my appeal against the Acting Agent's decision on the claim preferred to the land situated in Dubholie and Singunpoor, are not repeated here. After the death of the Nawab, notifications were issued by the Agent, inviting all who had any claim against the Nawab's estate, then under sequestration, to prefer it accordingly. In pursuance of this, Ameerool Nissa Begum sent in a memorandum of the property to which she asserted herself to have claim, in which the property in dispute is not entered. This shows that claimant is not at all entitled to it.

In his decision in the case of the claim to the house in Begumpoora, the Acting Agent remarks, Ameerool Nissa Begum, by an oversight, neglected to insert it in this memorandum, as she had prosecuted her claim to it before Sir R. Arbuthnot. This conclusion of the Agent is not proper, as it is beyond one's imagination to believe she could have neglected to prefer her claim to part of her property when all the property to which she asserted herself to have claim was sequestrated; everybody knows that which belongs to himself. Including the property in dispute in her claims prosecuted before Sir R. Arbuthnot, is not at all favourable to the present case, as had my answer been called for at that time, I would have brought forward the arguments above set forth, and it is usual, in case of any oversight occurring in the first instance, a second application is recorded, which was not done in this case.

I pray, therefore, your Honourable Board will, after taking the above circumstances into consideration, be pleased to send for the proceedings from the Agent, and, examining them, reverse the Acting Agent's said decision.

4 July 1854. Signed in Persian character.

(True Translation.)

(signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Meer Moeenoodeen Khan Wullud Meer Sudroodeen to the Address of the Right honourable the Governor in Council, against the Decision passed by the Acting Agent on the 7th April 1854, on the Claims preferred by me, Surfraz Ali, as Guardian of Meer Ibrahim Ali, a Minor, to the Phoal Waree.

THE deed of gift under which this garden is claimed is of the same date as those of Nugeena Bag and Dubholie; and the same grounds under which the Acting Agent considers the claim to the two last-mentioned gardens valid have been thought applicable to this case also. The appeals, therefore, that I have submitted in the case of those two gardens contain all the arguments in refutation of the Agent's decisions, which are equally applicable to this. It is, therefore, needless to recite them here. The Agent has also remarked in his decision on the several proofs recorded by Padshah Begum. It is, however, not necessary to say anything on that head, in this petition Padshah Begum having also appealed against the Agent's decision.

2 May 1856.

I pray, therefore, your Honourable Board will, taking the above circumstances into consideration, send for all the proceedings from the Agent, and, examining them, reverse the Acting Agent's decision.

4 July 1854. Signed in Persian character.

(True Translation.)
(signed) *W. H. Harrison*, A. G.

TRANSLATION of an Appeal Petition of Meer Mosenoodeen Khan Wallua Meer Sudroodeen Khan to the Address of the Right Honourable the Governor in Council, against the Decision passed by the Acting Agent, on the 7th April 1854, on the Claim preferred by Meer Surfraz Ali Khan, as Guardian of Meer Ibrahim Ali Khan.

1. I AM one of the heirs of the late Nawab Meer Afzulloodeen Khan, whose property was all sequestrated by the late Agent, on applications made by me and others to that effect; but of that property, jewellery to the amount of 62,18,312 rupees, and other articles which have not been valued, have been claimed by the said guardian of Meer Ibrahim Ali Khan, he asserting the greater part of the said jewellery and other articles to have been given in dehey to the Nawab's daughter, Nuteebool Nissa Begum, who was married to Meer Surfraz Ali's deceased son, Meer Akbur Ali Khan, and the rest to have belonged to Meer Akbur Ali Khan himself.

2. The Acting Agent, considering the claim valid, has decided to award the whole of the property claimed to Meer Surfraz Ali Khan, for Meer Ibrahim Ali Khan. I am dissatisfied with this decision, and beg to represent in this petition of appeal all the arguments in refutation of that decision, in order that it may be reversed.

3. It is true the property in dispute was in Nujeebool Nissa Begum's custody to the date of her death, as remarked in the 8th paragraph, but she had no proprietary right over it. The claimant has not attempted to show which of the said property was given in dehej, and which belonged to Meer Akbur Ali. The Acting Agent considers the said property as constituting dehej, on the ground of none other corresponding to the list having been forthcoming. This circumstance alone cannot establish the fact; for if Nujeebool Nissa Begum or her husband disposed of the property given by the Nawab in dehej, it is not strange it is not now forthcoming.

4. The substance of the Agent's decision is, that the Nawab secured the property not for myself, but for Meer Akbur Ali, and that it should therefore be given up to Meer Akbur Ali's father on behalf of his son, and that should the Nawab's heirs hold they have a claim on him, their only remedy is by a civil action. The Agent, however, seems to have made a mistake in coming to this conclusion, as the Nawab did not order to lock up the property and to put his seal upon it for Meer Akbur Ali. Nujeebool Nissa Tegum's foster mother, Ajul Bahar, to whom the keys of the locks were given, was a concubine of the Nawab, and the house in which she lived, and in which the property in dispute was lodged, belonged to the Nawab. It is not impossible that the Nawab should give the keys to his concubine, Ajul Bahar, who resided in that house; persons of respectability, like the Nawab, being always in the habit of entrusting to the management and care of their servants and concubines property to the amount of thousands of rupees; but this cannot establish the property to have been in the possession of such servants and concubines. Had this property been really secured for Meer Akbur Ali, why should the Nawab allow the seal to remain on the building in which the property in question was lodged up to the date of his death? he would have taken it off immediately Ajub Bahr recovered.

5. There is one substantial proof to consider the property in dispute as the Nawab's. After the death of the Nawab, the Agent ordered the native agent to go and sequester all the property that may be shown by Meer Jaffer Ali as belonging

belonging to the Nawab. In pursuance of this order the native agent sequestered that property only which was shown to him by Meer Jaffer Ali and Meeza Mahomed Ali Beg. This circumstance is acknowledged by witness No. 27, Gokuldass, the present native agent, who went with late native agent Ardaser for that purpose. Under these circumstances, the property in dispute was sequestered by the native agent as being the Nawab's. It is then a matter for consideration to your Honourable Board, that had the property not belonged to the Nawab; had Meer Akbur Ali a claim in it, and had it been retained in custody, sealed up as it was, for its rightful owner, how could Meer Akbur, Ali's own brother, Meer Jaffer Ali, and the Nawab's karbarie, Meeza Mahomed Ali Beg, point out to the native agent to be sequestered? The Agent, however, has not well considered the subject. 2 May 1850.

6. The Nawab died two years and five months after he had taken his property into his custody, and during that interval, or from the death of Nujeebool Nissa Begum to that of the Nawab, Meer Akbur Ali came to Surat twice, when he did not take any of the property, nor even tried to take it away. This circumstance is acknowledged by Akbur Ali himself in his petition No. 1. This proves that he had no claim on it whatever, and that it belonged to the Nawab. If it was not taken, nor any means used to do so, from the Nawab during his lifetime, it cannot now be claimed after his death.

7. Although the circumstance that Meer Akbur Ali did not take the property in dispute, and left it unclaimed from the date of his wife's death to that of the Nawab's, has been regarded very singular by the Agent, he remarks that Meer Akbur Ali having no second wife to make use of the ornaments, he may have not wanted them. This conclusion of the Agent, however, is an assumption, and is not applicable to this case, as Nujeebool Nissa Begum having died childless, the alliance which was formed between the Nawab and Meer Akbur Ali was obliterated. Not only such persons do not leave their property at the wife's father's, but it is usual with the fathers to send all the property that may have been paid to their daughter by the husbands to the latter immediately after the daughter's death, and to demand that from the husbands which may have been given by themselves. If a father fail to do so it is thought disreputable of him; it is therefore impossible the Nawab could have retained it, knowing it to belong to his daughter's husband, and intending to give it to him when Meer Akbur Ali married a second wife.

The Agent remarks, had the Nawab confiscated the property with the intention of appropriating it, he would have watched it more strictly, would not have left it in the apartments occupied by Meer Akbur Ali, and would not allow the keys to remain to the last with Najeebool Nissa Begum's foster mother. This remark of the Agent is not proper. His having put his seal on the building in which the property was deposited, and giving the keys to his concubine Ajub Bahr, it cannot be said he watched it less strictly than was to be expected. The building was not occupied by Meer Akbur Ali when the Nawab locked up the property in it; Ajub Bahr, although she was the foster mother of Nujeebool Nissa Begum, was the Nawab's concubine, and as such, and being trustworthy, he entrusted the keys to her, and allowed them to remain in her charge up to the day of his death. This circumstance cannot establish Meer Akbur the proprietor or possessor of the property in dispute. The other ladies of his family having plenty of ornaments, and being unwilling to put on those formerly used by the deceased daughter, the Nawab did not distribute the same among them.

8. The claimant has asserted that Nujebool Nissa Begum presented all her property to her husband during her lifetime, to prove which several instances have been recorded. The Agent, however, has not acquiesced in this gift; it is therefore not necessary to write anything in refutation of it here.

9. The dehej which is given by the Mussulmans, is of two kinds, as described by the Agent in the 6th para. of his decision. He has however not concluded which of these two kinds the dehej in dispute was. It appears from what he remarks in his 13th para., that it was lent for use, as during the investigation of the case the claimant produced witnesses who deposed that at the time the Nawab sent the dehej, he agreed, on Meer Surfraz Ali's disputing about it, it was not to be demanded back. As the Agent himself distrusts their evidence,

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it is needless to represent about them here any more than that Meer Surfraz Ali was sure it was lent for use only. Had it not been so, he would not have disputed about it. The best evidence considered by the Agent as establishing the property in dispute, constituted the dehej, is the list of those articles. In this list no mention is made as to the property having been given to her as proprietor. If therefore the dehej is not given her as proprietor, her husband has no claim on it after her death.

10. The claimant urges that it is not customary in the Nawab's family to take back the dehej, which fact is admitted by the Agent himself. It was however in the first instance necessary, for the claimant and the Agent to show whether it was even customary in the Nawab's family to keep the daughter's husband in his house as Meer Surfraz Ali did, by allowing his son the late Meer Akbur Ali to live with the Nawab on his marrying his daughter; they have not shown this; had they done so, they had in the second instance to show whether it was customary to give the dehej, given by the Nawab at a marriage of the above description, to the daughter's husband after her death; the claimant however does not bring forward any precedent having occurred in the Nawab's family. If therefore it was not, as remarked by the Agent, to take back the dehej in other cases, this custom does not apply to this particular instance, which should be governed by the custom prevailing among the tribe. Among the Mussalmans it is usual to take the dehej in case of a daughter dying childless. This fact was acknowledged by the claimant on my recording my answer No. 59, and is deposed to by witness No. 55, Meer Bahadoorshab, produced by the claimant. The Nawab himself used to give back the dehej to his wife's father on her dying childless. From the two instances quoted, it appears that the two persons, the Kazee and a Sodagur of Surat, to whom the Nawab gave back the dehej, were equal in respectability to the Nawab, and as the Nawab himself gave back the dehej, it seems to have been established; it was customary with persons of the rank and respectability of the Nawab to take and give back the dehej.

11. From the evidence of all the witnesses examined, excepting the Nawab of Cambay, it certainly appears it is not customary with families of the rank and position of the late Nawab to take back daughters' dehej, or to insist on the right to share in a deceased married daughter's property, as has been remarked by the Agent in the 11th paragraph of his decision. The Agent, however, has made a mistake in this remark, as it does not appear from the evidence of those witnesses as stated.

The depositions of the Nawabs of Baroda and Sucheen are written in a very succinct language, stating that they are not acquainted with the custom prevailing in the Nawab's family, and that all the chiefs and others are governed by the Mahomedan law. If, therefore, all the chiefs and others are governed by the Mahomedan law, all cases should be decided in conformity therewith; for, if the custom that is prevailing is contrary to the law, that custom can be set aside, but not the law. As regards the Agent's remark about my evidence, I have to represent that I deposed on oath that it was not in my knowledge the dehej was ever taken back, but that there was no objection to taking it back if it was so desired. If, therefore, it was thought necessary to apply my deposition to this case, the whole of it should have been quoted, and not a portion of it, as has been done.

12. In his petition, Meer Akhbar Ali states, the Nawab is entitled to half the property of his wife, but that it was not customary with the Nawab to take the share. This statement of Meer Akbar Ali is not proper, as the Nawab is entitled to half of the property of his daughter, Nujeebool Nissi Begum, according to the Mahomedan law, and it is usual in the Nawab's family to share in an inheritance. If a member of the family in which a custom which is opposed to the Mahomedan law prevails, prosecutes his claim to obtain his right according to the Mahomedan law, he is not restricted by that custom, but can obtain his legal rights.

13. The Nawab died in 1842, and the case under discussion has been decided 12 years since that event. The Agent now points out to us as the only remedy to apply through the civil courts. Is it not to be supposed, that if the course pointed out by the Agent were adopted, many more years would

elapse

elapse before the case would be finally settled. If the claimant is allowed to take away property to the amount of thousands of rupees, what can be got from him if it were decided otherwise by the civil courts, the claimant being an inhabitant of a foreign jurisdiction?

I pray, therefore, your Honourable Board will, taking the above circumstances into consideration, be pleased to send for all the proceedings from the Agent, and, reversing the Agent's decision, issue such an order that I may obtain my just rights, and no one may suffer loss.

4 July 1854. Signed in Persian character.

(True translation.)

(signed) *W. H. Harrison*, A. G.

EXTRACT Bombay Political Consultation, 4th October 1843.—No. 643 of 1843.

(No. 4335.)

From *J. Thomason*, Esq., Secretary to Government of India, to *L. R. Reid*, Esq., Chief Secretary to Government, Bombay.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, dated June 10th last, forwarding documents regarding the demise of the late Nawab of Surat.

2. The Governor-general in Council having obtained a declaration of the Mahomedan law, as it bore upon the question, has directed me to request that you will communicate to the Honourable the Governor in Council the following remarks.

3. His Lordship in Council is of opinion, that with the title and office of Nawab, expires all claim to the money which the British Government engaged to pay annually by the treaty of 1800.

4. That money was evidently to be paid as the clear surplus of the State revenue, after defraying all charges. It was to be paid to the Nawab as such. It was, and it remained, under the treaty, public property. It was not made private property, to be severed from the State when its head might fail.

5. The family are entitled, under the Mahomedan law, to certain shares in the division which must be made of the acknowledged private property of the late Nawab, and the Government ought to make some provision for a niece of the Nawab who will not have a share under the law; and likewise some provision for the near relations of the Nawab, if their shares in his private property should be inadequate for their decent support. This should be done from a sense of propriety, not as bound thereto by the treaty.

6. You are requested to move the Governor in Council to fix stipendiary provision for the near relations of the late Nawab, in conformity with the foregoing principles, and to report them for the consideration and final orders of the Supreme Government.

I have, &c.

Fort William, 9 September 1843. (signed) *J. Thomason*, Secretary to Government of India.

(Translation.)

A PERSON dying, left two widows, a daughter, a niece, and two great great grandfather's great great grandsons, one of whom is also a maternal uncle's son: how, and in what proportions will the estate of the deceased be divided amongst those persons, which of them is excluded from inheritance, and who is it that causes the exclusion of each? An answer to this question is desired according to each of the two Mahomedan codes, Soonee and the Imameyah code.

Answer.—According to the Soonee code, the estate will first be divided in eight shares, and ultimately into 16. One of these shares will be given to each of the widows, eight to the daughter, and three to each of the great great

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grandfather's great great grandsons. The one of the two last, who is also a maternal uncle's son, will receive nothing more on that account, nor will the niece receive anything, because these two relatives (viz., a maternal uncle's son and niece) are designated distant "kindred," and are excluded from the inheritance by the daughter, who ranks as a "sharer," and the two great great grandfather's great great grandsons, who are "residuaries." Thus it is laid down in the Surrjujaha treatise on inheritance. A commencement must be made with "sharers," and these are the relatives "whose shares" are fixed; then come residuaries by relationship, then residuaries by special cause, then "sharers" connected by blood are entitled to whatever may remain, according to their respective rights. In default of all these, the distant kindred obtain the estate.

The distribution will be thus:

Widow	1 share.
Widow	1 do.
Daughter	8 do.
A niece	nil.
Great great grandfather's great great grandson	3 do.
Ditto - - - ditto - - ditto - -	3 do.
Total - -	16 shares.

According to the Imameyah code, the division will be primarily into eight, and ultimately into 16 shares; of these each widow will obtain one, and the daughter 14 shares; the daughter will cause the exclusion of all the rest. Thus it is laid down in the Shiraya: "A son or daughter excludes any one "who is related to the deceased through one or both of the parents, as the "brothers, or the paternal or maternal uncles of the parents, and the children of "all these follow the same rule."

The distribution will be thus:—

Widow	1 share.
Widow	1 do.
Daughter	14 do.
Niece	nil.
Great great grandfather's great great grandsons	nil.
Total - -	16 shares.

(signed) *Mahomed Wujeeh*, First Professor, Mahomedan College.
Mahomed Bushuroodun, Second ditto - ditto.
Noorooluck, Third - - ditto - ditto.
Mahomed Ibrahim, Fourth ditto - ditto.
Abdoomkeen, Professor of Indian Law and Regulations.
Goolam Hussein, First Assistant.
Mahomed Muzheis, Second ditto.
Hubabool Nubbee, Third ditto.
Ujeeb Ahmed, Moulvee of the Law Examination Committee.
Uhmed Kubeer, Secretary to the College Committee.

(True translation.)

(signed) *J. Thomason*, Secretary to Government of India.

(True copy.)

(signed) *J. Thomason*, Secretary to Government of India.

2 May 1856.

The Honourable Captain *Sheppard*, Chairman of the Honourable Court of Directors.

Honourable Sir,

I BEG to acknowledge the receipt of Mr. Dickinson, the deputy secretary's letter of the 16th instant, intimating the decision of the Honourable Court of Directors with respect to the claims of my wife, Bukhtyarooneesa Begum, as set forth in her memorial to the Court of the 20th February and 8th June last. This communication has occasioned me severe disappointment, and, though I dwell with satisfaction on the hope that the case has met with full and careful consideration, would most unwillingly question the impartiality of the tribunal to which I appealed. I cannot conceal from the Honourable Court that the justice of the claims advanced by the Begum has been in nowise shaken by the unfavourable judgment which they have pronounced. The Honourable Court must be well aware that from the time of Meer Moseenoodeen Khan, her great great grandfather, who received the British with open arms when no other power in that part of India desired their alliance, down to the period when Meer Nusserrodeen Khan was prevailed upon to accept the treaty of 1800, and the government of the State passed altogether into the hands of the East India Company, her ancestors have proved on all occasions the firmest supporters and most faithful allies of the British Government; nor is itn ecessary to point out that her late father during the whole of his life evinced a similar degree of fidelity, and was distinguished by an equal desire to promote the interests of the Honourable Company. By the treaty of 1800, Meer Nusserroodeen Khan, for himself and his heirs and successors, ceded the government of Surat to the British, he having an absolute right to do so from the extinction of the Mogul power, in consideration of the British Government paying to him and his heirs a certain annual stipend; and during the negociation of this arrangement, the British representation repeatedly and emphatically declared that the pension was intended as a perpetual provision for the family, so that in claiming to inherit the allowance as sole surviving daughter and heir of the late Nawab, I cannot divest myself of the belief that Bukhtyarooneesa Begum has only shaped her demands in conformity to the terms of the engagement and the explicit understanding on which it was concluded. It is stated in your letter that the Court consider her claims to be inadmissible, but that they are desirous of bestowing upon the Begum, as well as upon the other members of the family of the late Nawab who were dependent upon him for support, a provision adequate to their wants and to their condition in life. I earnestly hope that your Honourable Court will yet consider the subject, more especially as there are numerous instances of similar relations to that of my wife between the British Government and principalities in North-west India, in which estates and pensions are enjoyed in perpetuity by general heirs.

It can never be the intention of your Honourable Court to cause the descendants of an ancient house to be reduced to poverty by their decree, but should you decline again to go over the grounds of my appeal, on behalf of my wife, I trust that in deliberating upon the provision to be assigned to her, your Honourable Court will take into consideration the numerous advantages which the British Government has reaped from its connexion with the house of Surat, and attach some weight to the good faith and amicable feeling which have marked all the proceedings of the latter during a long series of years. I sincerely hope these points will engage the attention of the Honourable Court; and as the circumstances under which the recent claims have been preferred afford an additional reason why the Begum and her family should enjoy a really liberal provision, I beg leave respectively to bring them likewise to their notice. A period of 14 months elapsed between the decease of his Excellency, the late Nawab, and the receipt of the Governor-general's decision respecting the case. On the occurrence of the first named event, I gave directions for the performance of obsequies suited to the dignity of the family, and subsequently I undertook the maintenance of the dependants, servants, horses, elephants, &c. belonging to the estate. In this, great expenses were incurred, and it became necessary to borrow money to the amount of two lacs of rupees, at the heavy interest of nine per cent. per annum, though from the Nawab having been indebted to the amount of nearly three lacs at the time of his death, the embarrassments of the estate were necessarily considerable, and have been much

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enhanced by the sequestration of the private property. Latterly, I endeavoured to diminish, as much as possible, the expenses of the establishment by disposing of most of the animals, and retaining such servants only as were absolutely indispensable. The debts originally incurred, however, still remain. Under the circumstances, I confidently hope that the allowance assigned to the Begum will be of liberal character, and that it will be granted in perpetuity, so as to allow of the gradual liquidation of the debts, while it affords an ample provision for the family.

In conclusion, I beg leave to annex a memorandum of the following requests, respecting which I recently did myself the honour of making a verbal communication to you. I hope due attention will be given to these by the Honourable Court, and that I shall soon receive a favourable reply:—

1st. The family to be treated on all occasions with the same respect and distinction as hitherto.

2d. The property of the Begum's late father, both real and personal, to be made over to her as the sole heir, and her own private property to be released from sequestration, and also conveyed to her.

3d. Disputes of the Begum and her dependents to be referred for adjustment as usual to the Government Agent, and not to the Civil Court, the interference of the latter in concerns of the family never having, as yet, taken place, and being likely to be considered derogatory.

4th. The distribution of the stipends to the dependents to be allowed to be made as usual through the Begum, with the view of preventing any falling off in their obedience to her.

5th. The conduct of some of the officers of her late father, in managing the receipts and disbursements, having been very unsatisfactory, Government to lend its aid in causing them to render their accounts to her, if the matters be not otherwise amicably settled.

6th. Government to interfere in facilitating the settlement of the former and present debts, as has been lately done in the case of the Nawaub Baloo, of Sicheen.

7th. The Honourable Court to kindly advance to me the sum of 10,000 rupees, for my passage back to India (which sum can be accounted for with the Government Agent at Surat, as the heavy expenses incurred during my stay in this country have nearly exhausted the funds I brought with me from India.

I have, &c.

7, Sloane-street, 22 August 1844. (signed) *M. J.*

No. 238 of 1846.—Political Department.

(No. 30.)

To Meer Jaffur Allee Khan Bhadoor, Surat.

Sir,

I HAVE the honour to communicate the decision of Government on the claims advanced by you for yourself and on behalf of your children to the private property of the late Nawaub of Surat, and upon the British Government.

2. Regarding the various claims which have been advanced by the relations of the late Nawaub to share in the private property, these involve points of Mahomedan law, and have been referred to the Judges of the Suddur Udalut, in order that it may be ascertained whether the decisions are in conformity with Mahomedan law and usage in this part of India.

3. As respects the claim advanced by you on behalf of your two infant daughters to succeed to the wakaya nigaree fees, or town duties and taxes on trades and professions, I am directed to inform you that the claim to the continuance of these fees is untenable, and the payment of any sums formerly allowed to the late Nawaub in part compensation of those hucks, have been directed to be discontinued for the future, and all sums formerly granted by Government in compensation for any portion of these hucks, will cease to be paid from the date of his Excellency's death.

4. Government

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4. Government have required a more detailed report in regard to the precise nature of the Mooglaee hucks held by the late Nawaub, and the decision on this claim will be communicated to you hereafter.

5. As regards the claim to the continuance of exemption from the jurisdiction of the civil and criminal courts of justice under this presidency enjoyed by the relations and servants of the late Nawaub during his life, I am directed to inform you that this right ceased from the date of his death, and that the exercise of the right which the Nawaub possessed to dispense justice has also become extinct in any but the ordinary courts of justice. These courts must therefore take cognizance of all matters which, during the life of the Nawaub and the recognition of his dignity, would have been exempted from their jurisdiction.

6. As however all contracts, and generally all money transactions, entered into by his relations and dependents, were not regulated by the provisions of the Bombay code, since he was not bound in the exercise of his independent jurisdiction to administer justice according to its enactments, and that consequently the Law of Limitation on the time for prosecuting civil actions (Regulation V. of 1827), and the Registration Acts (Regulation XI. of 1827), and Act I. of 1843, were inoperative and unheeded by those over whom his jurisdiction extended, the immediate application, therefore, of the restrictive provisions of these enactments to persons who, previously exempt from the jurisdiction of the civil and criminal courts, became amenable to the regulations on the death of the last Nawaub, would necessarily prove prejudicial to those whose cause of action was of a date which barred the suit from being entertained in the court. This subject is now under the consideration of Government.

7. In reference to the amount of *Rs.* 1,08,439. 10. claimed by you, and alleged to have been disbursed by you from the day following the Nawaub's death up to the 19th February 1844, being a period of 18 months and 11 days, in defraying debts and the funeral expenses of the deceased, and the maintenance of the Nawaub's establishment, as stated in the margin,* it appears that the sum of *Rs.* 10,438. 4. 3. of the first of these items was expended in liquidating arrears of servants' wages, and other pressing claims due by the Nawaub at the time of his death, and Government is pleased to admit this charge, and, upon its being clearly shown that this amount was really paid by you, has sanctioned your being indemnified for this outlay from the private estate of the Nawaub.

8. As respects the charge of *Rs.* 18,254. 12. 9. made by you on account of the funeral expenses of the Nawaub, forming second of the above items, an outlay to the extent of *Rs.* 17,483. 3. would appear to have been substantiated, and the Government have authorised your being indemnified for this outlay to the extent of *Rs.* 17,483. 3., the amount that has been substantiated.

9. Under the peculiar circumstances of the case, the Honourable the Governor in Council has determined to relieve the sharers of the personal property of the late Nawaub from a portion of the expense that would be incurred by them were the amount of the funeral expenses of the deceased defrayed from that property, and has resolved that a contribution shall be made by Government of the

*

	Rs.	*a.*	*p.*
1. Paid on account of pressing debts of the Nawaub	10,555	5	9
2. Funeral expenses of the Nawaub	18,254	12	9
3. On account of provisions for the family and dependants of the Nawaub	16,450	4	–
4. Servants' wages	44,012	15	3
5. Grass and curbee, &c.	5,236	6	3
6. Miscellaneous charges	6,654	7	9
TOTAL RUPEES	1,01,164	3	9
Interest on the above amount, at 9 per cent. per annum	7,275	6	3
GRAND TOTAL	1,08,439	10	–

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the sum of 8,000 rupees towards defraying the funeral expenses of the deceased (17,483 rupees), and that the balance (9,483 rupees) shall be defrayed from his personal estate.

10. The Honourable the Governor in Council has further resolved, under all the circumstances, that towards the maintenance of the establishment from the 8th August 1842, being the date of the Nawaub's death, to the 1st November 1843, the expense on which account, with interest, amounts to nearly a lac of rupees, Government shall contribute the sum of 20,000 rupees, and also pay to you the pensions which each of the parties who were actually maintained by you are entitled to during that period, the remainder of the expense being defrayed from the personal estate of the deceased.

11. You will also be permitted to receive from the 1st November 1843 to the 1st April 1845, on which latter date commenced the payment of the pensions to the family of the Nawaub, the pensions of those maintained by you during that period, each of these pensions being calculated from the 9th August 1842, the day following the death of the Nawaub.

12. In reference to the loan of 10,000 rupees, which was advanced to you by the Honourable the Court of Directors on your leaving England, I am directed to inform you that this amount must be made good out of your own share of the estate, or out of the arrears of pension to be assigned to your deceased wife, Buktyarool Nisha Begum, the only surviving daughter of the Nawaub at the time of his death.

13. I am directed to inform you, that the Honourable the Governor in Council has been pleased to authorise the payment to the heirs of Buktyarool Nisha Begum, of the arrears of pension, at the rate of 2,000 rupees per mensem, from the 9th August 1842, being the day following the death of the late Nawaub, to the 9th January 1845, the date of this lady's death.

14. Notwithstanding neither yourself nor the daughters of the late Buktyarool Nisha Begum possess any valid claim on Government for the continuance of the whole of this allowance, Government on its liberal consideration has resolved to continue the whole of this stipend for life, in the proportion of 1,000 rupees per mensem to yourself, and 500 per mensem to each of the daughters, it being distinctly understood that each of these allowances will be resumed on the death of the incumbent.

15. In conclusion, I have to inform you, that no payment as above awarded by Government will be made, until they have been formally accepted in satisfaction of all demands.

I have, &c.

Surat, Office of Agent, (signed) *P. Stewart*,
Camp Phoolpara, 4 November 1846. Acting A. G.

Political Department.

To Meer Jaffer Allee Khan Bahdoor, Surat.

Sir,

With reference to your letter of the 27th October last, forwarding for transmission to Government, copy of a judgment recently passed by the Honourable the Chief Justice of the Supreme Court of Bombay, I beg to inform you, that I am directed by Government, in a letter from Mr. Chief Secretary Malet, dated 9th instant, to intimate to you, that if an established and acknowledged custom be considered to overrule the law in certain families of Mahomedans, such custom can affect only the families themselves and not other parties. As far, therefore, as regards the claims of inheritance to the private property of the late Nawab, the parties interested will be able, when the proposed Act shall have been passed, to prosecute any claim they may think they possess; but at the same time I am desired to inform you, that if you intended by your representation under acknowledgement to advance any claim again to the dignity and pension of the late Nawab, such claim cannot be allowed.

I remain, &c.

Surat, (signed) *J. W. Andrews*,
Office of Agent for the Hon. the Governor, A. G.
16 December 1847.

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Political Department.

To Meer Jaffer Alee Khan Bahdoor, Surat.

Sir,

With reference to your letter, dated 10th instant, calling upon me to request Government to favour you with copy of the draft of the proposed Act, alluded to in my letter of the 16th December last, I am directed to inform you that whatever Act the Government may contemplate passing into a law will be published in regular course, when you will have an opportunity of seeing it.

I remain, &c.

Surat, (signed) *J. W. Andrews*,
Office of Agent for the Hon. the Governor, A. G.
25 January 1848.

Memorial to the Honourable the Court of Directors of the East India Company, from Meer Jafur Alee Khan Bahadoor, on behalf of himself and his Infant Daughters.

To the Honourable the Court of Directors of the East India Company.

The Memorial of Meer Jafur Alee Khan Bahadoor, on behalf of himself and his infant Daughters, by his late Wife Bukhtyaroonisa Begum.

Respectfully showeth,

That Bukhtyaroonisa Begum, the only surviving daughter of Meer Ufzulooddeen Khan, the late Nawab of Surat, in the month of February 1844, preferred a Memorial to your Honourable Court, claiming to receive an annuity of one lakh of rupees, together with a further annual sum of 50,000 rupees, as a composition for one-fifth of the surplus annual revenues of the city of Surat and its dependencies, and praying your Honourable Court to bestow on your Memorialist, as her husband, the title of Nawab of Surat, in accordance with the expressed wishes of her father the late Nawab.

That your Memorialist proceeded to England to urge the subject of the memorial on the attention of your Honourable Court, and after a short stay there returned to Bombay, under a belief that the Government of Bombay would be directed by your Honourable Court to make such a provision for your Memorialist's late wife and family as would be a substantial concession of the pecuniary claims preferred in her memorial.

That shortly after your Memorialist's return he was afflicted with the loss of his wife, who departed this life on the 9th January 1845, leaving two daughters, named Ziyaoonnissa Begum and Raheemoonnissa Begum, who, with your Memorialist, are by the Mahomedan law her heirs.

That your Memorialist, with an anxiety rendered painful by his having been deprived of all means of support, awaited for a long period a communication from the Government of Bombay, of the arrangement which it was intended to make for the maintenance of your Memorialist and his family, and at length, in the month of November 1846, the agent of the Honourable the Governor at Surat made the following communication to your Memorialist:—

"I am directed to inform you that the Honourable the Governor in Council has "been pleased to authorise the payment to the heirs of Bucktyaroonesa Begum "of the arrears of pension at the rate of 2,000 rupees per mensem, from the 9th "August 1842, being the day following the death of the late Nawab, to the "9th January 1845, the date of this lady's death. Notwithstanding neither "yourself nor the daughters of the late Bukhtyaroonesha Begum possess any "valid claim on Government for the continuance of the whole of the allowance, "Government on its liberal consideration has resolved to continue the whole of "this stipend for life, in proportion of 1,000 rupees per mensem to yourself, "and 500 rupees per mensem to each of the daughters, it being distinctly "understood that each of these allowances will be resumed on the death of the "incumbent.

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"In conclusion, I beg to inform you that no payment, as above awarded by "Government, will be made, until they have been formally accepted in satisfac- "tion of all demands."

That your Memorialist regards the foregoing as such an entire denial of the claims preferred by the late Bukhtyaroonisa Begum, as to compel him again to address your Honourable Court, in order to urge upon your consideration the strong foundation upon which those claims are built, and that however disposed your Memorialist would have been to submit to a great sacrifice to obtain an immediate adjustment of them, it was not from any doubt of the perfect integrity of them, but from the difficulty of enforcing them by adverse means.

That your Memorialist cannot learn that the claim of his late wife to the annuity of 1,50,000 rupees has been disallowed, either by the Government of India or by your Honourable Court, upon any other ground than that, as the title and office of Nawab expired on the decease of the late Nawab Meer Uf-zooludeen Khan, all claim to the annuity expired also, on the assumption that it was payable to the Nawab in virtue of his office, as the net surplus of the revenues, and had never become private property.

That your Memorialist respectfully submits, that the interpretation thus placed on the articles of agreement under which the annuity was paid, is not only altogether erroneous as regards the very terms of the articles, but is in direct opposition to every fact and circumstance which attended their execution, and that, in truth, the annuity was never declared or intended to be dependent on the office of Nawab, or in the least degree connected with it, but was a mere pecuniary annuity granted in perpetuity to the individual who then held the Government of Surat, in consideration of his consenting to relinquish that government, and its revenues, to the East India Company.

That the Memorial preferred by the late Bukhtyaroonisa Begum may perhaps in some measure have contributed to the assumption which has been made of the necessary connexion between the Nawabee and the annuity, by soliciting the concession of them both at the same time; but your Honourable Court will not fail to observe, that the solicitation of the former was an appeal to your Honourable Court to confer the Nawabee on your Memorialist, in consideration of her ancestors having been the first to aid in the establishment of British power in Western India, and of the long friendship which had existed between her ancestors and the British Government, at the same time admitting that the Government possessed the right of granting the title and dignity of Nawab at its pleasure; but that the claim to the annuity was preferred for herself, as one of right resting on the provisions of the agreement.

That in order to show more clearly that the principle on which the claim to the annuity has been disallowed by the late Governor-general and your Honourable Court is wholly erroneous, your Memorialist will briefly recapitulate the events which led to the agreement being entered into with the Nawab Nasseeroodeen Khan in 1800.

In the beginning of the last century the power of the King of Delhi in Goozerat was destroyed by the founders of the Guicowar's kingdom, and the government of the city of Surat, and the revenues set apart for the maintenance of the fleet of the King of Delhi became the subjects of contest between the families whose members had received grants of them, about the time of the overthrow of the King's authority.*

Meah Achun, called also Mynoodeen Khan, having married into the family of Teg Beg Khan, a former Nawab of Surat, possessed himself in 1748 of the government of Surat, and after enjoying it for three years was expelled by a rival claimant, but in 1758 effected his reinstatement in the government.

In the year 1759 a treaty was entered into by Mynooden Khan with the East India Company, whereby it was agreed that he should be acknowledged and supported as Nawab, and that an individual named by them should be his naib, or chief officer, and that the East India Company should hold the castle of Surat, and enjoy the revenues assigned for the support of the fleet of the King of Delhi; and shortly afterwards sunnuds were obtained from the King of Delhi in favour of the Nawab, and committing the charge of the fleet to the Company; the

* Mr. Governor Duncan's Minute, dated 13th August 1799.

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the Mahrattas however continuing to maintain their rights of sovereignty as the conquerors of the Nizam of Goozerat, by receiving a considerable portion of the revenues of Surat.

Meah Mynoodeen Khan died in 1763, and his eldest son, Meah Kutboodeen, claimed to succeed him, but as competitors began to spring up, he applied to the English authorities for assistance, and the government of Bombay issued an order to its chief at Surat to aid him in obtaining a firman from Delhi, and in the meantime to support him by their troops in the Government; and in the month of March he was installed in his dignity by the chief and council, without waiting for any sunnud from Delhi, under the name of Meer Hufferzoodeen Ahmed Khan, and in his time all connexion with the sovereignty of the Great Mogul appears to have been discontinued.

When the demise of Nawab Meer Hufferzoodeen Khan was looked upon by the Government of Bombay as not far distant, the Government submitted to the consideration of the Governor-general, whether it might not be practicable to secure to the Company, through the Court of Delhi, the reversion of the entire government of the city of Surat, in the event of the Nawab's decease; but the Nawab died in March 1790, before any determination was arrived at, leaving two sons, the eldest named Meer Nizamooden, and the younger Meer Nasseeroodeen Khan, when the Bombay Government again suggested to the Government of Bengal, either to abrogate the succession, or to obtain some pecuniary concession from the late Nawab's son.

The Bengal Government, however, declared its opinion, which was confirmed by the Court of Directors, that the late Nawab's eldest son had a claim to the office by right of inheritance, and as it was considered expedient that sunnuds should be obtained through the Mahratta power of Scindiah from the King of Delhi, and that Meer Nizamoodeen Khan should pay a nuzzerana of *Rs.* 20,000 to Scindiah, while the latter desired that the same should be increased. Great delay ensued in the formal recognition of Meer Nizamoodeen, until the Governor-general at length left it to the Nawab himself to yield to the claim or not, and directed the investiture to take place on the sole authority of the Company's Government, which was done accordingly on the 29th of December 1792.

The Government of Bombay, finding that their establishment at Surat greatly exceeded their share of its revenues, and conceiving the city to be ill-governed by the Nawab, began to insist upon his surrendering to them a portion of his revenues; and an inquiry having been set on foot by the Government to ascertain the amount, Mr. Governor Duncan came to the conclusion, on the report of Mr. Alexander Ramsay, a civil servant at Surat, that the Nawab's annual income was not much above five lakhs of rupees, and that although the Nawab's gross income might possibly amount to between six and seven lakhs of rupees, yet so much thereof was directed to the support of others, such as the Nawab's brother, the bukshee (the state treasurer), Jaffer Yab Khan, and the lesser native dependents, that it might, perhaps, be considered equally uncertain whether his available resources amounted to five lakhs, as to suppose that they exceeded that aggregate.

The Honourable Court of Directors, on the subject being referred to them, declared that they were not satisfied of their power to proceed even as far as to appoint a naib (in succession to the officer named in the Treaty), and directed that if the Government of Bombay should approve of a proposal made to raise a force for the defence of the castle of Surat, the expense should be defrayed by the Nawab out of his public revenue. After a prolonged negotiation with the Nawab Meer Nizamoodeen, to give effect to the orders of the Court of Directors, an agreement was prepared in 1798, whereby the Nawab was to pay an annual donation of one lakh of rupees to the East India Company, and to forego in their favour several items of revenue. This agreement was forwarded to the Governor-general of India for his approbation; but while it was under consideration, Nawab Meer Nizamoodeen died, leaving an infant son who did not long survive his father.

Meer Nasseeroodeen Khan, the only brother of the late Nawab, upon these events addressed the Governor of Bombay to recognise his right of succession to the Nawabee, when the Governor directed the agent at Surat to ascertain what lengths Meer Nasseeroodeen was willing to go to obtain the English Government's sanction to his succession, taking care not to acknowledge him

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until all these were gained.* Meer Nasseeroodeen, however, objected to make the further concessions desired of him, and the Governor of Bombay, in a letter of the 16th April 1799, intimated to him that his brother shortly before his decease had acquiesced in the agreement which had been proposed, adding, that as that event afforded the best opportunity to effect such a permanent arrangement of the affairs of Surat, as its circumstances required, amongst which the establishment of the office of Naib as stipulated for, and constituting one of the essential conditions of the original treaty, appears to be particularly called for, it seemed proper that the re-establishment of that officer and his (the Nawab's) own elevation to the dignity of Nawab, should, as being equally consonant to existing treaties, both take place at one and the same time.

The Governor-general, on receipt of the reference from the Bombay Government, being about to proceed to the Carnatic to open the campaign against Tippoo Sahib, briefly replied to it from Madras in these terms: "The papers relating to Surat at Calcutta I am not able to answer your reference on that subject; being quite satisfied of your discretion, I request you will decide without reference, any parts of that question which may press for a determination."† But the Government of Bombay replied, suggesting that the question regarding Surat lied more open than might prove the case for many years to come, and soliciting further instructions from the Governor-general, assuring him that in the meantime they would continue to make further progress in inducing the then present successor to accede to the full extent of the demand made upon him.‡

The Governor-general having concluded the war against Tippoo by conquest, and reverting to the consideration of the affairs at Surat, addressed a despatch to the Government of Bombay in the following extracts, from which the Governor-general discloses the motives by which he was actuated, and the principles by which he was guided, in directing the agreement which he then forwarded to the Government of Bombay to be carried into effect.

"The terms of the Treaty concluded with Mynoodeen Khan in 1759, the "powers which devolved to the Company, as governor of the castle and com- "mander of the fleet at Surat, as detailed in the statement of Mr. Erskine, and "in the minute of Mr. Seton, dated the 15th March 1796, the reservation to "the Company, by the Treaty of 1759, of the appointment of a Naib to the "government of the city, vested with all the powers exercised by that officer, "during the administration of Sufder Khan, the investigation instituted into "every branch of the government of the city, under the orders of the Honour- "able Court of Directors of the year 1761, founded on the rights which the "Company had acquired, with the arrangements made in consequence of that "investigation, and the participation of the Company in the revenues, preclude "all doubt of the original rights of the Company to exercise a joint control with "the Nawab, Mynoodeen Khan, over every branch of the administration of "the city.

"But whatever doubt might have arisen as to the exact limits of the authori- "ties of the Company, and the Nawab, Mynoodeen, it appears to us that all "questions on that subject necessarily ceased on the demise of that Nawab."

"On a reference to the Treaty of 1759, concluded with Mynoodeen, we find "that it was only a personal engagement with that Nawab, and that it did not "extend to his heirs independent of the terms of the Treaty, the discussions "which passed in 1763 on the death of Mynoodeen, as well as the letter from "your Government, dated the 25th March 1790, when the office of Nawab "again became vacant by the death of Kutboodeen (the other name of Nawab "Hufuzoodeen), prove it to have been the general sense, that the operation of "the Treaty of 1759 ceased on the demise of Mynoodeen."

"The power of the Mogul having also become, in fact, extinct, as is evinced "by the result of the application made for his sanction to the succession of the "late Nawab, it follows that the Company not being restricted with respect to "the disposal of the office of Nawab by any specific Treaty, are at liberty to "dispose of it as they may think proper."

"The

* Letter of Mr. Duncan to Mr. Seton, dated 9th February 1799.
† Letter from Earl Mornington to Mr. Duncan, dated 3d February 1799.
‡ Letter from the Government of Bombay to the Earl of Mornington., dated 16 April 1799.

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"The right of disposing of the office of Nawab is accompanied by an indispensable duty of providing a just, wise and efficient administration for the affairs of Surat, the lapse of the powers of Government having left no other party, excepting the Company, in a state to protect the persons and property of the inhabitants of that city."

"The late Nawab, therefore, and his father, Kutbudeen, must be considered to have succeeded to the office of Nawab, not in virtue of the Treaty of 1759, concluded with Mynoodeen, but through the favour and friendship of the British Government extended to them in consideration of the connexion which subsisted between their ancestor, Mynoodeen, and the Company."

"The same equitable principle will guide our determination respecting the succession on the present occasion, but with such limitations as the safety and good government of the city demand."

"The defenceless state of Surat has for many years past afforded the most serious grounds of apprehension; and a variety of additional considerations, arising out of recent events (several of which are adverted to in the minute of Lieut.-general Stuart, transmitted with your letter of the 21st January last), render the placing of the city in a respectable state of defence, an object of the greatest importance to the British interests."

"With regard to the internal government of the city, the frauds, exactions, and mismanagement in the collection of the revenue, the avowed corruption in the administration of justice, and the entire inefficiency of the police, as manifested in the different tumults which have occurred in the city, particularly that excited in 1795, afford abundant evidence that the Nawabs were as incompetent to conduct the internal government of the city, as to provide for its external defence."

"It is obvious that these important objects can only be attained by the Company taking the entire civil and military government of the city into their own hands, and consequently it is their duty as well as their right to have recourse to that measure."

"You will explain the grounds of this determination to Nasseerooddeen, and deliver to him the enclosed articles of agreement, his acquiescence in which must constitute the conditions of his being allowed to succeed to the office of Nawab."

"We have fixed the amount of the provision to be made for the Nawab, on the estimate of the revenues and the expenses of the late Nawab, furnished by Mr. Ramsay."

"It must be clearly explained to the Nawab that he is to provide, from the share of the revenues allotted to him by the articles of agreement, a suitable maintenance for the families of his predecessors, and that he is not to be entitled to any portion of the labour of artificers or other persons in the city, or to any pecuniary advantages or rights whatever, excepting such as are expressly reserved to him."

"Provided it shall appear to you advisable, we shall have no objection to your leaving, during the pleasure of the British Government, in the Nawab's possession, as an equivalent for the proportion of the payments in money stipulated to be paid to him, any part of the jagheer, or other lands attached to the government of the city, which he may wish to retain, or which, from their distance from Surat, it may be found inconvenient for your public officers to manage. The Nawab should, of course, be allowed to retain any houses or gardens which he may occupy."

"These assignments of lands, however, should be granted under a provision, that they shall not interfere with any exchange of territory, which it may be hereafter determined to make with the Mahrattas."

"If Nasseerooddeen shall ratify these articles, you will place him in the station of Nawab. If he shall refuse his acquiescence, you will withhold your sanction to his succession; assuming, however, the entire administration of the government of the city and its revenues, in the same manner as if Nasseerooddeen had ratified the articles of agreement."

"It will be proper to make a suitable provision for Ameerooddeen Buckshee Zaffer Yab Khan, and any other officers of the late Nawab, whose situations and means of subsistence may be affected by the reform of the government. This provision should be general, and be made in money, but we shall have no objection to your substituting land, in cases in which you may deem it

 "advisable.

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" advisable. The notification of these provisions to the persons to whom they " may be granted, should precede the declaration for the assumption of the " government."

" We should hope that the revenues of Surat, under the new system of " administration, will be adequate to the civil, military, and marine expenses, " including the provision to Nasseerooddeen and the dependents of the family.

" To obviate any just grounds of complaint on the part of the Mahrattas against " this arrangement, it will be necessary to continue to pay to the agents of the " Peishwa and Govindrow Guicowar, whatever sum they may have received " on an average from the revenues arising from the administration of justice."

It is unnecessary here to set forth the agreement above adverted to, as it has been repeatedly before your Honourable Court.

In May 1800, the Governor of Bombay proceeded to Surat, to carry into effect the instructions of the Governor-general, and for several days personally engaged in active negotiations with the minister, relatives, and confidential advisers of the Nawab, as recounted in the diary of the Governor; from which it appears that amongst other representations to induce the Nawab to acquiesce in the proposed agreement, the Governor desired the Minister to point out to the Nawab the expediency of his cheerful acquiescence in and quickly signing the new Treaty, which would give a security for an honourable provision to his master, and his family and descendents, from generation to generation, greater than they had ever yet had, since the former articles of agreement of 1759 were evidently only of a temporary nature; whereas the Company, who never failed in a strict adherence to their engagement, would have then become bound in perpetuity to the support of the Nawab and his family; and when, again, a confidential adviser of the Nawab, named Vissoonath, stated to the Governor of Bombay, through his principal agent, Mr. De Souza, that all the real objection the Nawab seemed to have to the signing of the Treaty was, from the 4th article not having the words " for ever" after the word " heirs" in the second line; and that, instead of an uncertain one-fifth, estimated to amount to about 60,000 rupees a year, he wished to have a sum of two lacks on the whole, not liable to contingencies, and that Vissoonath had sent for the Persian copy of the Treaty to the Nawab's house, to point out where the defect of the words " for ever " stood, that Mr. De Souza might get this objection removed; but the Governor, in reply, told Mr. De Souza to go home and send back the Treaty if it had arrived during his absence, that no cause for delay might ensue; assuring also Vissoonath, that a stipulation for a man and his heirs meant for ever, or until such heirs became extinct. It is further stated in the diary that Mr. De Souza also noticed that they had observed as a defect in the Treaty, that it did not specify either that he, the present Nawab, should be seated on the musnud, or that his heirs should be so successively seated. But to these objections the Governor gave no particular answer.

Fourth. The English Company agree to pay to Nawab Nussroodeen and his heirs out of the revenues of Surat and its dependencies, in four equal quarterly payments, one lack of rupees annually, which shall be considered to be the first charge payable from the revenues.

On the following morning the Nawab attended the Governor of Bombay, by whom the interview is thus described in his diary:

" The Nawab came to-day, and without any preparatory observation delivered " the Treaty, executed under his own seal, having the impression of his new " title, Kutboodeen Dowla, together with his monsoor and bevy, and witnessed " by the seal of the buckshee, under his new title of Sufder ul Moolk, there- " upon declaring that he altogether depended on me, and on nothing else. I " then called on Kerparam, the Nawab's minister, compared the two Persian " copies he had made with each other; made some slight corrections therein " in his hand in the Nawab's presence, and added this day's date, as in the " margin. Then Mr. Grant being called in, and the Company's seal being " affixed to the copy I was to execute, it was accordingly signed by me at top " and at bottom, and witnessed by Mr. Grant, and, by my desire, by Kerparam " also, who in like manner added (the whole passing in the Nawab's presence) " his attestation, as a witness, under the buckshee's seal, to the other copy " deliverable to me; and then, the executed copies being thus interchanged, " and mutual congratulations being passed, the Nawab and I were again left " alone; whereon, bowing down his head on my knees, he said, 'Allow me now " 'to repose my confidence in you, trusting you will shroud my shame, and be " 'my director and protector.' I said I would, provided he would, as I recommended,

"mended, consider me as his truest friend and be guided by my counsel, in "preference to all other suggestions (which he said he would); and the good "effects thereof he would, I said, find in six months or in a twelvemonth. He "talked of addressing the Right honourable the Governor-general; but this "I dissuaded him from; observing, it was best implicitly to abide to what had "passed, and to show himself content therewith, and to take and follow in "everything my advice, which he said he would, and appeared quite consoled "and satisfied." 2 May 1856.

The Nawab, on the cession of his state, being in debt, both on account of his government to sepoys and others, and on his private account for his domestic expenses, the Government undertook the settlement of the former, receiving on account of them the arrears of revenue, and paying the balance out of the Company's treasury; but, in order to enable the nawab to discharge the latter, the Government advanced him 67,670 rupees, as a loan on his bond, whereby he pledged to the Government his growing stipend, treating it as his private property.

It may be here noticed that the Governor, in the early part of the negotiations, offered to Meer Nasseeroodeen to assign to him part of the jagheers of Surat in lieu of the proposed annuity, and that in compliance with the instructions of the Governor-general, the Governor at the same time settled a stipend on the buckshee (the Nawab's state treasurer before mentioned), which is thus explained in the despatch of the Governor of Bombay on the subject:—

"The buckshee had for many years past been in the possession of various "jagheers, that his relations, the Nawabs of Surat (at different times, but all "above 20 years ago) alienated in his favour from various parts of the "Magullaye, as assigned revenues on the neighbouring pergunhas, for the "support of the Nawabship, in like manner as they have (as far as depended "on them) done to various other individuals. These estates or assignments, "which the buckshee appeared to be very desirous of retaining, amount yearly, "according to the valuations expressed in the perwannahs or grants, to "16,810 rupees, respecting which the present Nawab declared, on being "separately consulted, that he considered them as having, from the original "grants, and the length of possession, become the buckshee's property; on all "which grounds, and the others detailed under the dates of my separate diary, "referred to in the margin, I have settled that, including the said jagheers, "the buckshee receive from the Company an annual stipend of 30,000 rupees; "to be continued to his children and family, after his decease, at the reduced "rate of 24,000, with a clause inserted in the grant, in conformity to the "instructions to that effect, from the Most noble the Governor-general in "Council, that, in the event of its becoming expedient for Government to "resume the jagheers, the parties shall be satisfied to receive their valued "produce from the treasury, in like manner with the residue of their pension."* 18th, 19th, and 22d June.

The circumstances above detailed having been officially reported to the Governor-general of India and the authorities in England, the acts and conduct of the Governor of Bombay, it is believed, met their approbation, and the Nawab thus sunk from being the Prince of the city and dependencies of Surat, into a titled subject of the East India Company, without any territorial authority or power, but enjoying a personal exemption for himself and followers from the process of the courts of justice, which were then for the first time established in Surat.

Nawab Meer Nasseeroodeen died in the year 1821, when his son Meer Ufzooludeen was invested with the dignity of Nawab, and was allowed to enjoy the privileges and immunities of his father by the Government of Bombay until his decease in the year 1842, leaving your Memorialist's late wife, Bucktyaroonesa Begum, his only issue.

That your Memorialist has thus briefly recapitulated the leading circumstances which attended the execution of the agreement, under which he prefers his claim to your Honourable Court, solely on the authority of the records of Government laid before Parliament, which must therefore be the account of them most adverse to your Memorialist, but which he believes will, nevertheless, satisfy your Honourable Court, that the stipulated annuity ought to be continued to the descendants of the late Nawab.

That

* Para. 33 of the Governor's Minute, dated 25th July 1800.

2 May 1856.

That if your Memorialist's claim is to be determined by the articles of agreement standing alone, your Honourable Court will not fail to observe, that in all those clauses and provisions of it which relate to the privileges of the Nawab, the word heirs is nowhere inserted, and that in the 4th clause only, by which the annuity was made payable, is the word heirs introduced: thus in the very terms of the articles showing, that it was the intention of the Governor-general of India, by whom the agreement was framed, while he abstained from obliging the East India Company to grant any privileges or immunities to the heirs of the Nawab, to bind the East India Company without reserve to pay the stipulated annuity to the Nawab's heirs.

That on reference to the despatch of the Right Honourable the Governor-general above quoted, your Honourable Court will be satisfied that the Governor-general altogether repudiated the opinion that the Nawabee was hereditary, or could be enjoyed by right of descent even by Meer Nasseeroodeen Khan, though claiming from his father, and consequently by the same title as his deceased brother; the Governor-general considered that the Nawabee must be regranted after every demise, and that it rested with the East India Company at their pleasure to invest Meer Nasseeroodeen with that dignity. Your Memorialist therefore respectfully submits, that the omission of the word heirs throughout the agreement, in all that respected the dignity and immunities of Nawab, must have been intentional, and can only be referred to the views regarding that office then entertained by the Governor-general, viz., a reservation to Government of the discretionary power of investing any of the heirs of the Nawab with that office.

That in providing without restriction for the payment of the annuity to the heirs of the Nawab, while at the same time the succession of those heirs to the title and immunities of Nawab was not admitted, the Governor-general distinctly acknowledged that the annuity was to be paid to those heirs altogether, irrespective of their rank or title as Nawabs.

That in considering the effect of the articles of agreement, and the despatch above referred to, your Honourable Court will be satisfied, that by them nothing remained to the Nawab, but a mere empty title, without any local jurisdiction or authority, or any single duty or responsibility which rendered it necessary even for Meer Nasseeroodeen Khan, with whom the agreement was made, to expend one rupee in any other manner than as a private individual, living on his own income; that the exemption of his followers from the courts of justice was but partial, for he was not permitted to do more than refer matters to arbitration, subject to an appeal, either to the courts of justice, or to the agent of Government, and that there was therefore no necessary connexion between his title and immunities, and his annuity; and your Memorialist would ask, for what purpose or object or on what account was the annuity made payable to Meer Nasseeroodeen Khan and his [heirs?] unless it were to be paid as the pecuniary price of his peaceful resignation to the East India Company of all his contested rights and claims to the Government and revenues of Surat and its dependencies?

That your Memorialist submits, that the circumstance of the annuity being the surplus revenue of the former state of Surat, so far from being a ground for the extinction of the annuity with the title of Nawab, affords the strongest argument to show that it was intended as a money payment for the late Nawab's private benefit in consideration of his surrendering the city and dependencies of Surat; for the Government throughout its transactions professed its desire to take possession of the city and dependencies, solely for the purpose of introducing a better system of Government, and not for any pecuniary advantage; but your Memorialist begs to draw the attention of your Honourable Court to the fact, that the annuity of one lakh of rupees is made payable as the first charge on the revenues, as if it were a debt due from the State, and that only one-fifth of the net revenues is a contingent payment, and it appears from the estimate of revenue above quoted that the Nawab relinquished to the East India Company, Jagheers producing 1,70,000 rupees per annum, with the other revenues amounting in the whole to 5,94,750 rupees, on the basis of which the Governor General expressly stated in his despatch he had fixed the amount of the annuity.

That in determining the meaning of the agreement which your Memorialist can only regard as admitting of doubt, from your Honourable Court having refused to give it effect, your Memorialist submits, that the representations made

2 May 1856.

made, and explanations given, by the Governor of Bombay, by whom it was obtained, recorded at that time, and then communicated with it to your Honourable Court, and by your Honourable Court confirmed, must be accepted by your Honourable Court as a conclusive explanation of the intent of the contracting parties; by that explanation the Governor of Bombay expressly declares, that the term heirs in the 4th article of the agreement meant the descendants of Meer Nasseeroodeen in perpetuity, and that the annuity was a provision for their support; but when asked whether the dignity of Nawab was hereditary, he declined to give any such assurance; thus in the most marked manner drawing a distinction between the one and the other, and while leaving it to be inferred that the investiture with the dignity of Nawab would after each demise depend on the pleasure of the British Government, declaring that the payment of the annuity was an irrevocable grant to the descendants of Meer Nasseeroodeen Khan for ever.

That your Memorialist would remind your Honourable Court, that while Meer Nasseeroodeen Khan surrendered Jagheers of the value of 1,70,000 rupees to the East India Company, the Governor of Bombay with the sanction of the Governor-General was prepared to grant to Meer Nasseeroodeen a portion of those jagheers in lieu of the pension, and had they been granted, what circumstance would there have been to distinguish them from the ordinary wuzzeefa tenure, under which many estates are held of the Government? that is, by grant to individuals in perpetuity for the maintenance of themselves and their descendants or heirs. These villages and lands, females, equally with male descendants, inherit as heirs, according to the Mahomedan law. That such was the character of the grant is further shown by Meer Nasseeroodeen Khan being required to promise that he would maintain out of the annuity the female relations of his father; and your Memorialist also refers your Honourable Court to the Minute of the Governor of Bombay, above noticed, in which he declared that that portion of the jagheers which had been granted by the Nawab's father and grandfather to the buckshee, had become his private property, which the Governor could not in justice resume; and to this day it is not disputed that the pension granted by the Government to the buckshee (an officer of the Nawab), as part of the settlement of Surat simultaneously with the execution of the agreement, is his private property, and a complete alienation of so much of the revenues of the state. And your Memorialist submits, that it is a manifest contradiction to admit that the buckshee, who claimed a portion of the Nawab's lands by grants to him from the Nawab, should be held to possess a good right to them, while the Nawab's heirs should be deemed to have no right to a pension granted to him as an equivalent for those lands which remained in his own possession, and were surrendered by him to the East India Company.

That your Memorialist refrains from repeating to your Honourable Court the arguments adduced in the memorials of the late Bukhtyaroonisa Begum to establish her right to the annuity, nor will your Memorialist now enter into the question, who are to be regarded as the heirs of the late Nawab; but your Memorialist respectfully submits, that the late Bukhtyaroonisa Begum was the sole decendant of the late Nawab, living at his decease, and your Memorialist's children, as her only issue and the sole descendants of the Nawab now alive, are justly entitled to receive from your Honourable Court the annuity of 1,50,000 rupees; but, if it should be considered by your Honourable Court that the heirs general of the late Nawab are entitled to the annuity, your Memorialist believes he can establish that, notwithstanding the Mahomedan law administered in the courts of justice in India, his children are entitled to be regarded as the heirs-general of the late Nawab; but whosoever may be determined to be such heirs, your Memorialist trusts, that your Honourable Court will on a review of the provisions of the agreement and of the circumstances attending its execution, declare that the annuity of 1,50,000 rupees has not expired with the dignity of Nawab, but is still payable out of the revenues of Surat. And your Memorialist humbly prays that your Honourable Court will be pleased to direct the Government of Bombay to pay the same to your Memorialist on behalf of his children during their infancy, and afterwards to themselves and their heirs for ever.

And your Memorialist will ever pray, &c.

Bombay, Girgam House, May 1847. (signed) *Jafur Alle.*

2 May 1856.

From *A. Malet*, Esq., Chief Secretary, to *Meer Jaffer Allee Khan*, Son-in-law of His Excellency the late Nawab of Surat, dated 14th June 1843.

Sir,

With reference to your memorial to the address of the Honourable the Court of Directors, dated the 10th May 1847, I am instructed to inform you that that authority has directed that an intimation be made to you that nothing therein advanced has altered their opinion on the points on which you have solicited a re-consideration, and the decision which has been passed upon them is final.

I have &c.,
(signed) *A. Malet*,
Chief Secretary.

Bombay Castle, 14th June 1848.

— No. 55. —

(No. 3,046.)

Minute by the Honourable the Governor, concurred in by the Honourable Mr. *Willoughby*, dated 4th April 1848.

The Government do not consider any change in the draft Act necessary. The petition should, however, be sent to the Government of India, with an intimation that on the Act being passed it is our intention to empower the agent to the Governor to summon all parties who claim to participate in the late Nawab's estate, and to adjudicate their respective claims after full inquiry, in the presence of all parties consulting on all points of law, the Mahomedan law officers of greatest repute.

2. That his decisions will be made subject to the confirmation of Government, any appeals against those decisions being inquired into and decided by Government, which decisions will be final.

3. That after the estate has been thus distributed all future cases of dispute, with the exemptions noticed in the Act, will be subject to the jurisdiction of our ordinary tribunals.

(signed) *G. Clerk.*
J. P. Willoughby.

— No. 67. —

(No. 5,376.)

Minute by the Right Honourable the Governor, concurred in by the Honourable Mr. *Willoughby*, dated 23d June 1848.

1. The draft Act now forwarded by the Government of India differs in many respects from the one prepared by this Government, and which was read for the first time before the Legislative Council on the 5th February last. These differences are as follow :

Draft Act, as read on the 5th February last.	*Draft, as now prepared to be amended by the Government of India.*
Fort William, Home Department Legislative, the 5th February 1848.	Fort William, Home Department Legislative, the 27th May 1848.
The following Draft of a proposed Act was read in Council for the first time on the 5th February 1848.	Amended Draft Act.
Act No. , of 1848.	
An Act for the Administration of the Estate of the late Nawab of Surat.	An Act for the Administration of the Estate of the late Nawab of Surat, and to continue Privileges to his Family.
Whereas it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzoo-looddeen Khan Kumrood Dowleh Ushmut Jung Bahador.	Whereas it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzoo-loodeen Khan Kumrood Dowleh Ushmut Jung Bahador.
And	And

And whereas the exemption from the jurisdiction of the civil and criminal courts enjoyed by certain persons under the provisions of clause 2, section 21, Regulation II., of 1827, and clause 2, section 1, Regulation XI., of 1827, of the Bombay Code, ceased and determined at the death of the said late Nawab, and it is deemed desirable to continue such privilege to some of the said persons:

1. It is hereby enacted that the Governor of Bombay in Council shall be, and is hereby empowered to exempt from the jurisdiction of the civil and criminal courts, the widows and such of the present relatives of the late Nawab of Surat as may to him seem proper; and to declare the persons so exempted amenable to the authority of an agent whom he may appoint for this purpose.

2. And it is hereby enacted, that it shall be competent to the Governor in Council of Bombay to act in the administration of the property of whatever nature left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nawab at the time of his demise, and to make distribution of the remaining property among his family, and that all acts of the said Governor in Council of Bombay in respect to such property from the date of the demise of the said late Nawab, shall be held to be valid, and not liable to be questioned in any court of law.

3. And it is further enacted that the limitation of time for filing claims in the Civil Courts, provided in the said Regulation V., of 1827, shall be held in respect to all persons who are exempted from the jurisdiction of the Civil Courts, by the provisions of clause 2, section 21, of the said Regulation II., of 1827, to commence from the 8th day of August 1842, being the date of the demise of the said late Nawab.

And whereas the exemption from the jurisdiction of the civil and criminal courts enjoyed by the said late Nawab and his relations and servants, by virtue of the treaty concluded between the East India Company and the said late Nawab, on the 13th May 1800, recognised and confirmed by clause 2, section 21, Regulation II., of 1827, and clause 2, section 1, Regulation XI., of 1827, of the Bombay Code, ceased at the death of the said late Nawab, and it is deemed expedient that some of the said persons should continue to be privileged:

It is enacted as follows:

1. No writ or process shall be sued forth or prosecuted against the person, goods, or property of the several persons named in the schedule annexed to this Act, being the widows and family of the said late Nawab, or of any of them, unless with the consent of the Governor of Bombay in Council first had and obtained, such consent to be signified by the signature of one of the secretaries to Government; and any writ or process sued forth or prosecuted against the person, goods, or property of the said several persons, or any of them, without such consent as aforesaid, shall be utterly null and void.

2. The Governor of Bombay in Council is empowered to act in the administration of the property of whatever nature left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nawab at the time of his death, and to make distribution of the remaining property among his family, and no act of the said Governor of Bombay in Council, in respect to the administration to and distribution of such property, from the day of the death of the said late Nawab, shall be liable to be questioned in any court of law or equity.

3. The limitation of time for bringing suits in the Civil Courts, provided in Regulation V., of 1827, of the Bombay Code, shall be held in respect to all persons within the provisions of clause 2, section 21, of the said Regulation II., of 1827, to begin as to all causes of action arising before the passing of this Act, from the day of the passing of this Act, subject to this provision, that no suit by or against any of the said persons shall be enter-

2 May 1856.

And it is further enacted that deeds registered under the provisions of any Act passed by the Governor General in Council of India, shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the promulgation of this Act, by any persons distinctly exempted under the said clause 2, section 21, of Regulation II., of 1827, provided such deed shall relate to property conveyed to the owner prior to the date of the demise of the said late Nawab.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 5th day of May next.

(signed) *G. A. Bushby*,
Secretary to the Governor of India.

tained in any Civil Court on account of any cause of action which arose at a time preceding the death of the said late Nawab, by more than the number of years or months severally limited, with reference to such cause of action, by the said Regulation V., of 1827, as the period within which the suit must be filed, after such cause of action arose, or came to the knowledge of the Plaintiff, as the case may be.

4. Deeds registered under the provisions of any Act passed by the Governor General of India in Council, shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the day of the passing of this Act, by any persons within the provisions of the said clause 2, section 21, of Regulation II., of 1827, provided that such last-mentioned deed relates to property conveyed to the owner before the day of the passing of this Act.

5. This Act shall not be construed to restrict the operation of the said Treaty; and, independently of this Act, the said several persons shall be entitled to claim, maintain, and enjoy any privilege to which, by virtue of the said Treaty, they or any of them may be entitled.

SCHEDULE.

Of the late Nawab.
1. Badshah Begum, widow,
2. Ameerool Nissa Begum, widow,
3. Meer Jaffa Alli, son-in-law,
4. Zeeavol Nissa Begum, granddaughter,
5. Raheemool Nissa Begum, granddaughter,
6. Meer Mooeenooden Khan Buckoliee.
7. Meer Kumcoodeen Vuluot Shumsooddeen.

(True copy.)

(signed) *G. A. Bushby*,
Secretary to the Governor of India.

ACT

NAWAB OF SURAT.

ACT OF 1848 - - { AS ORIGINALLY ADVERTISED; AS AMENDED BY THE LEGISLATIVE COUNCIL OF INDIA, AND RETURNED TO THE GOVERNOR OF BOMBAY; AS SUBMITTED FOR SUBSTITUTION; AS FINALLY PASSED.

Draft of Act as originally Advertised.

An Act for the Administration of the Estate of the late Nawab of Surat.

WHEREAS it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzooloodeen Khan, Kumrood Dowleh, Ushmut Jung Bahador:

And whereas the exemption from the jurisdiction of the civil and criminal courts enjoyed by certain persons under the provisions of clause 2, section 21, Regulation II. of 1827, and clause 2, section 1, Regulation XI. of 1827, of the Bombay Code, ceased and determined at the death of the said late Nawab, and it is deemed desirable to continue such privilege to some of the said persons:

I. It is hereby Enacted, That the Governor of Bombay in Council shall be and is hereby empowered to exempt from the jurisdiction of the civil and criminal courts the widows and such of the present relatives of the late Nawab of Surat as may to him seem proper, and to declare the persons so exempted amenable to the authority of an agent whom he may appoint for this purpose.

II. And it is hereby Enacted, That it shall be competent to the Governor in Council of Bombay to act in the administration of the property, of whatever nature, left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nawab at the time of his demise, and to make distribution of the remaining property among his family; and that all acts of the said Governor in Council of Bombay in respect to such property, from the date of the demise of the said late Nawab, shall be held to be valid, and not liable to be questioned in any court of law.

III. And it is further Enacted, That the limitation of time for filing claims in the civil courts, provided in the said Regulation V. of 1827, shall be held in respect to all persons who are exempted from the jurisdiction of the civil courts by the provisions of clause 2, section 21, of the said Regulation II. of 1827, to commence from the 8th day of August 1842, being the date of the demise of the said late Nawab.

IV. And it is further Enacted, That deeds registered under the provisions of any Act passed by the Governor-General in Council of India shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the promulgation of this Act, by any persons distinctly exempted under the said clause 2, section 21, of Regulation II. of 1827, provided such deed shall relate to property conveyed to the owner prior to the date of the demise of the said late Nawab.

Copy of Act as Amended by the Legislative Council of India, and Returned to the Governor of Bombay.

An Act for the Administration of the Estate of the late Nawab of Surat, and to continue Privileges to his Family.

WHEREAS it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzooloodden, Khan Kumrood Dowleh, Ushmut Jung Bahador:

And whereas the exemption from the jurisdiction of the civil and criminal courts, enjoyed by the said late Nawab and his relations and servants, by virtue of the Treaty concluded between the East India Company and the said late Nawab, on the 13th May 1800, recognised and confirmed by clause 2, section 21, Regulation II. of 1827, and clause 2, section 1, Regulation XI. of 1827, of the Bombay Code, ceased at the death of the said late Nawab, and it is deemed expedient that some of the said persons should continue to be privileged:

It is Enacted as follows:

I. No writ or process shall be sued forth or prosecuted against the person, goods, or property of the several persons named in the Schedule annexed to this Act, being the widows and family of the said late Nawab, or any of them, unless with the consent of the Governor of Bombay in Council first had and obtained, such consent to be signified by the signature of one of the Secretaries to Government; and any writ or process sued forth or prosecuted against the person, goods, or property of the said several persons, or any of them, without such consent as aforesaid, shall be utterly null and void.

II. The Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nawab at the time of his death, and to make distribution of the remaining property among his family; and no act of the said Governor of Bombay in Council, in respect to the administration to and distribution of such property, from the day of the death of the said late Nawab, shall be liable to be questioned in any court of law or equity.

III. The limitation of time for bringing suits in the civil courts, provided in Regulation V. of 1827 of the Bombay Code, shall be held, in respect to all persons within the provisions of clause 2, section 21, of the said Regulation II. of 1827, to begin, as to all causes of action arising before the passing of this Act, from the day of the passing of this Act, subject to this provision, that no suit by or against any of the said persons shall be entertained in any civil court on account of any cause of action which arose at a time preceding the death of the said late Nawab, by more than the number of years or months severally limited with reference to such cause of action by the said Regulation V. of 1827, as the period within which the suit must be filed after such cause of action arose, or came to the knowledge of the plaintiff, as the case may be.

IV. Deeds registered under the provisions of any Act passed by the Governor-General of India in Council, shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the day of the passing of this Act, by any persons within the provisions of the said clause 2, section 21, of 1827, provided that such last-mentioned deed relates to property conveyed to the owner before the day of the passing of this Act.

V. This Act shall not be construed to restrict the operation of the said Treaty, and independently of this Act the said several persons shall be entitled to claim, maintain, and enjoy any privilege to which by virtue of the said Treaty they or any of them may be entitled.

SCHEDULE.

1. Badshah Begum	Widow	of the late Nawab.
2. Ameerool Nissa Begum	Widow	
3. Meer Jaffur Alli	Son-in-Law	
4. Zeeaool Nissa Begum	Granddaughter	
5. Raheemool Nissa Begum	Granddaughter	
6. Meer Mooeenooden Khan	Buckshee.	
7. Meer Kumroodeen Vulud Shumsooddeen.		

True Copy.

(signed) *G. A. Bushby,*
Secretary to the Government of India.

Draft submitted for Substitution.

THAT the estate and effects of the late Nawab, and the administration thereof, shall be exempt from the jurisdiction of the civil courts of justice, and shall be under the authority of the agent to be appointed as aforesaid, *but subject to the control of the Government; and that no action or suit shall be brought in any court of law for any act done by the agent or other officer of the Government* of Bombay at Surat, since the decease of the late Nawab, *respecting his estate or effects.*

Act as finally Passed.

An Act for the Administration of the Estate of the late Nawab of Surat, and to continue Privileges to his Family.

WHEREAS it is expedient to provide for the administration of the estate of the late Nuwab of Surat, Meer Ufzooloodeen Khan, Kumrood Dowleh, Ushmut Jung Bahadoor: And whereas the exemption from the jurisdiction of the civil and criminal courts enjoyed by the said late Nuwab and his relations and servants, by virtue of the Treaty concluded between the East India Company and the said late Nuwab, on the 13th May 1800, recognised and confirmed by clause 2, section 21, Regulation II., 1827, and clause 2, section 1, Regulation XI., 1827, of the Bombay Code, ceased at the death of the said late Nuwab, and it is deemed expedient that some of the said persons should continue to be privileged: It is enacted as follows:

I. No writ or process shall be sued forth or prosecuted against the person, goods, or property of the several persons named in the Schedule annexed to this Act, being the widows and family of the said late Nuwab, or of any of them, unless with the consent of the Governor of Bombay in Council first obtained, such consent to be signified by the signature of one of the Secretaries to Government; and any writ or process sued forth or prosecuted against the person, goods, or property of the said several persons, or any of them, without such consent as aforesaid, shall be utterly null and void.

II. The Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nuwab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nuwab at the time of his death, and to make distribution of the remaining property among his family; and no act of the said Governor of Bombay in Council, in respect to the administration to and distribution of such property, from the date of the death of the said late Nuwab, shall be liable to be questioned in any court of law or equity.

III. The limitation of time for bringing suits in the civil courts, provided in Regulation V., 1827, of the Bombay Code, shall be held, in respect to all persons within the provisions of clause 2, section 21, of the said Regulation II., 1827, to begin, as to all causes of action arising before the passing of this Act, from the day of the passing of this Act, subject to this provision, that no suit by or against any of the said persons shall be entertained in any civil court on account of any cause of action which arose at a time preceding the death of the said late Nuwab by more than the number of years or months severally limited with reference to such cause of action by the said Regulation V., 1827, as the period within which the suit must be filed after such cause of action arose, or came to the knowledge of the plaintiff, as the case may be.

IV. Deeds registered under the provisions of any Act passed by the Governor-General of India in Council, shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the day of the passing of this Act, by any persons within the provisions of the said clause 2, section 21, Regulation II., 1827; provided that such last-mentioned deed relates to property conveyed to the owner before the day of the passing of this Act.

SCHEDULE.

1. Badsah Begum	Widow	of the late Nawab.
2. Ameerool Nissa Begum	Widow	
3. Meer Juffer Ali	Son-in-law	
4. Zeeaool Nissa Begum	Granddaughter	
5. Ruheemool Nissa Begum	Granddaughter	
6. Meer Moeenoodeen Khan	Buckshee.	
7. Meer Kumroodeen Unlud Shumsooddeen.		

East India House,
20 February 1856.

T. L. Peacock,
Examiner of India Correspondence.

2 May 1856.

To the Right Honourable the Governor-General of India in Council.

The humble MEMORIAL of Meer Jafur Alee Khan Bahadoor, of Surat, on behalf of himself and of Ameerooneesa Begum, Widow of the late Nawab of Surat, and of his Infant Granddaughter Zayoonissa Larlee Begum, and Rahamoonis, a Begum.

Showeth,

1. That your memorialist has learnt from the public papers that the draft of an Act for the administration of the estate of the late Nawab of Surat, which was lately laid before the Legislative Council of India, providing that the Governor in Council of Bombay shall make distribution of the property left by the late Nawab among his family, and that all Acts of the said Governor in Council of Bombay in respect of such property, from the date of the demise of the late Nawab, shall be held to be valid, and not liable to be questioned in any court of law.

2. That your memorialist, conceiving that these latter provisions of the Act will deprive him of his just rights, respectfully submits to the consideration of your Lordship in Council a statement of the circumstances, which he trusts will induce your Lordship in Council so to modify the provisions of the Act as to allow your memorialist to obtain at the hands of the agent to be appointed under the Act an equitable and impartial decision on every question respecting the estate of the late Nawab which your memorialist may desire to submit to his adjudication.

3. That the late Nawab, at the time of his decease, left him surviving Ameerooneesa Begum, his widow, and an only daughter, named Bukhtyarooneesa Begum, since deceased, the late wife of your memorialist, and also left Padsha Begum, to whom he had been married, and from whom he had been separated many years, and two fourth cousins, his nearest relations claiming through the male line; and while your memorialist admits that by the law of inheritance adopted by some of the Soonee Sect in India, the fourth cousins of the late Nawab would be entitled to a share in his estate, yet your memorialist is prepared to prove that it was an established custom in the Nawab's family not to divide inheritance with collateral kindred, and that this has not only in fact occurred on several occasions, but that it was so declared by a solemn instrument attested by the collateral relations of the Nawab, and by those through whom the fourth cousins of the late Nawab would now claim to share in his estate; and your memorialist respectfully submits, that such a custom, with a prince not subject to the regulations, became in effect a law, and that there is nothing whatever repugnant in such a law to the religious law of the late Nawab, inasmuch as the inheritance of property in the absence of sons is not regulated by the Koran; and that not only does a large sect of the Mahomedans acknowledge the law of the Imaums, by which the inheritance would expressly descend to a daughter, but many other numerous sects of Mahomedans, such as the Borhas, Cojhas, and Moplas, disregard the Mahomedan law of inheritance, and the usages of particular families had been recognised, as your memorialist has been informed, in the courts of justice; and your memorialist believes that even in Mahomedan countries customs of inheritance prevail over the law, which has been handed down by writers whose authority on points of civil law is not a matter of religious belief, but results from the necessity of referring to some standard of law, by which conflicting rights may be adjusted where there is no other law known to the state.

4. Your memorialist, however, is not now seeking a decision of your Lordship in Council on this very important question; but he trusts that he has urged sufficient to induce your Lordship not to declare by an Act of the Legislative Council that the estate of the late Nawab shall be divided without regard to the rights claimed by your memorialist and his family.

5. That although the rights of your memorialist's late wife to inherit the Nawab's private estate should not be admitted, your memorialist respectfully submits,

submits, that no just ground subsists for the interference of the honourable the Governor in Council, in the first instance, in the administration of the private property of the late Nawab; but that that, as well as other property, having been taken from your memorialist's possession, in the manner described below, should now be restored to your memorialist, and that full indemnity should be made for the losses which have been sustained, as hereinafter stated. 2 May 1856.

6. Upon the decease of the late Nawab, your memorialist, on behalf of his wife, the late Nawab's daughter, managed the private immovable property left by the late Nawab, and took charge of his immovable estate; and your memorialist was also in possession of several gardens and houses, and other immovable as well as certain movable property, which had been derived from the Nawab by gifts made at various periods in his lifetime. But in the month of December 1842, the agent for the Honourable the Governor in Council issued a public proclamation for the seizure of all the property of the late Nawab; and under colour of it, not only took under his charge the houses, gardens, and other immovable property of which the Nawab had died possessed, but also all the private immovable property of his widow and daughter, which had been at any previous period acquired by them through the late Nawab.

7. Your memorialist, and those he represents, feeling greatly aggrieved at these proceedings, but being assured that they were adopted merely as a measure of security, offered to the agent security to account for all property in their possession; and though the agent at first intimated his intention of accepting it, yet when ample security was tendered to him, he declined to receive it, and persisted in seizing everything which, without deliberate inquiry, he thought fit to assume belonged to the late Nawab.

8. Your memorialist cannot better make manifest to your Lordship in Council the manner in which your memorialist's family were treated than by quoting the letters received from the agent of the Honourable the Governor.

On the 2d of June 1843 the agent wrote to the widow and daughter of the Nawab in the Persian language to the following effect:—"Thirdly, forward to "me quickly a correct list of all the property of the late Nawab; should you "fail to comply with my request, I shall be under the necessity of resorting to "such measures as will probably not please you."

On the 15th of February 1844 the agent again wrote in Persian:—"To-"morrow being the 16th of February 1844, I intend calling at the palace of "the late Nawab, and everything which may be there belonging to the Nawab "you must deliver over to my care; if this does not meet with your approval, "and you do not deliver over to me the property, it is the intention of the "Governor to stop at once the provision made for your maintenance by the "Governor-General."

9. Your memorialist and his brother, having been presented on the marriage with the Nawab's daughters with a number of household effects, and for several years kept them in Dhurria Mehel, which had belonged to the Nawab, and had been presented by him to his wife and daughters long before the marriage of the latter; but on your memorialist declining to surrender them to the agent, he addressed to your memorialist the following letter on the 5th of May 1845:—

"The effects of the late Nawab, which are in the Dhurria Mehel, it is requi-"site for me to take an inventory of, and put under my care. I would, there-"fore, request you to send me the keys of both places which contain such "property."

10. To which your memorialist replied on the same day, the 28th of Rubbeeassanee 1261, as follows:—

"There is no property belonging to the late Nawab in the Dhurria Mehel, "but there is property there which is part of the dowry of Bukhtyarooneesa "and Nujeebooneesa Begum."

11. And on the next day your memorialist received a further communication, as follows:—

"I have received your communication dated 28th Rubbeeassanee. In reply, "I must state that if you are possessed of the keys of the Dhurria Mehal, you "would

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" would oblige me by sending them without delay. Should you fail in doing " so, I shall order the government servants under my charge to open the same, " and take an accurate inventory of the effects deposited there. You had " better send me a quick reply."

12. To which your memorialist, on the ensuing day, sent the subjoined answer :—

" There is no property belonging to the late Nawab in the Dhurria Mehal ; " all property deposited there belongs to the above named Begums, as stated in " my former communication. Should you deem it advisable, persons on the " part of each party will take down an inventory of them. You state that, " should I not deliver up the keys, you will open the house and take down a " list of the effects. I again inform you that persons on the part of each party " should transact the business."

13. And on the 12th of the same month the agent of Government again wrote to your memorialist as follows :—

" I have issued orders to the native agent to call on the Dhurria Mehal to- " morrow, open the place, and take down an accurate inventory of the effects " deposited there. Should you deem it requisite, you had better order any one " of your men to be in attendance at the place while the native agent is taking " down the list."

14. Which letter your memorialist replied to on the 13th, as follows :—

" With the utmost respect I beg to inform you that the agent has no lawful " claims at the Dhurria Mehal. I have now, very reluctantly, sent you the " keys of the place, according to your very pressing and imperative request."

15. Your memorialist, and the other members of the family of the late Nawab, could not but feel how inconsistent this treatment at the hands of the agent of the Governor of Bombay was, with the expressions of the honourable the Court of Directors in their letter to your memorialist, under date the 7th of September 1844, in which the following passage occurs :—

" East India House, the 7th September 1844.

" Whilst the Court must decline any discussion respecting the grounds of " their decision against the claims of Buktyoroonnessa Begum to inherit the " dignity and stipends of the late Nawab of Surat, they are, I am directed to " state, most desirous that the relations and connexion of his late Excellency " should be not only liberally provided for, but treated with the consideration " due to the high rank of the family of which Meer Afgulodum Khan was the " last male representative."

16. Your memorialist, in order to avoid the disgrace of having his property violently seized by the agent, was compelled to comply with the agent's threat- ening demand. It has been recently ascertained that a considerable portion of the property, valued at about 6,000 rupees, was stolen, but it cannot be disco- vered when, or by whom, in consequence of the agents having been repeatedly changed, and their having been unable to take that personal care of it which your memorialist would have done had it remained in his own custody.

17. The officers of Government, in assuming the management of the estates of the Nawab and his family, let them at whatever rents they thought fit, while they were not at the trouble of taking that care of the gardens and estates which was essentially necessary for their preservation, and a very considerable loss has been in consequence sustained. Your memorialist has not yet examined the accounts of the whole of the property ; but the following is a brief summary of the loss already sustained by your memorialist :—

A village oonteyadra had been farmed out under a contract for the term of 10 years ; but the officers of Government rescinded the contract, by which a loss of 4,500 rupees has been sustained.

At the date of the proclamation under which the estates were subject, the arrears due from the farmers and tenants of the whole of the estates of the Nawab and his family, of which information was given by your memorialist to the agent of the honourable the Governor, and by the devan of the late Nawab

to

to the subordinate officers, amounted to *Rs.* 18,382. 11.; but the officers of Government were not at the trouble of collecting these arrears, and they now may be regarded as altogether lost.

On comparing the accounts of the rents received by the officers of Government with those of the two years preceding the seizure of the property, it has been ascertained that there has been an annual diminution, amounting in five years to *Rs.* 7,153. 7.; in addition to which, the rent having been collected by the officers of Government in Company's rupees instead of the currency broach, in which they had been previously paid, a further loss of *Rs.* 1,715. 11. 7. had been sustained on that account.

The fruit trees and flowers in the gardens, from which a considerable revenue was derived, required a careful supervision in order to compel the tenants to use them according to the rules of gardening, and to ensure their being regularly and sufficiently irrigated; but by the neglect of the officers of Government in that respect, a great number of fruit trees and plants have withered and been destroyed, and gardens which had been brought to maturity, and rendered productive at a great expense, have been rendered comparatively worthless; but it would require a careful examination of the gardens to ascertain the extent of deterioration and diminution in value which has taken place in consequence of the above neglect.

The produce of the late Nawab's property has since its seizure, as your memorialist believes, been paid into the public treasury at Surat, and it has been applied in payment of pensions to servants and dependents of the Nawabs, at the pleasure of Government, when the money should have been invested at interest for the benefit of the parties who may ultimately be found entitled to receive it, or the creditors of the late Nawab might have been paid their debts. And your memorialist would submit that if any of the creditors should have to be paid interest on their debts, such interest should be paid by the Government, and that for the surplus five per cent. interest should be allowed.

18. That the agent of the Honourable the Governor having thus possessed himself both of the property of the late Nawab, and of much of the property of his family, issued a proclamation for all persons having any claims to come forward and establish the same before him. Upon this your memorialist (though respectfully protesting against the course the agent had adopted, and was then pursuing, by which persons were, in fact, incited to make claims on the Nawab's estate) submitted to the agent statements of the rights and interests of himself and family in the property which had been seized.

19. That the agent of the Honourable the Governor, having made such investigations as he thought fit into the affairs of the Nawab's estate, proceeded to Baroda, leaving all his papers and proceedings with Ardaseer Dhunjeeshah Bahadoor, of Surat, who had formerly been the native agent, but between whom and your memorialist considerable enmity then subsisted; and your memorialist has reason to believe that Ardaseer Dhunjeeshah Bahadoor forwarded to the agent comments upon your memorialist's claims, in order that the agent might prepare his report, which, after the lapse of some months, was sent by the agent from Baroda to the Honourable the Governor in Council.

20. That your memorialist having, at the request of the agent, produced to him certain jewels (which had been given by the late Nawab to your memorialist's son), in order that they might be identified by Surat persons, whose statements the agent desired to record, the agent refused to allow your memorialist to take back his jewels, and they have been since detained from your memorialist, notwithstanding they had for several years previously been in your memorialist's possession, and they were shown by the most undoubted testimony to belong to your memorialist as the heir of his deceased son.

21. That your memorialist, on the 4th day of November 1846, received a letter from the successor to the above-mentioned agent of the Honourable Governor, an extract of which is as follows:

"No. 238, of 1846.—Political Department.

"I HAVE the honour to communicate the decision of Government on the "claims advanced by you for yourself and on behalf of your children to the "private property of the late Nawab of Surat, and upon the British Government.

 "2. Regarding

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"2. Regarding the various claims which have been advanced by the relations "of the late Nawab to share in the private property, these involve points of "Mahomedan law, and have been referred to the Judges of the Suddar Adaulut, "in order that it may be ascertained whether the claims are in conformity with "Mahomedan law and usage in this part of India.

"3. As respects the claim advanced by you on behalf of your two infant "daughters to succeed to the Wakayanigaree fees, or town duties and taxes "on trades and professions, I am directed to inform you that the claim to "the continuance of these fees is untenable, and the payment of any sums "formerly allowed to the late Nawab in part compensation of the Hucks, have "been directed to be discontinued for the future, and all sums formerly granted "by Government in compensation for any of these Hucks will cease to be paid "from the date of his Excellency's death.

"4. Government have required a more detailed report in regard to the pre-"cise nature of the Mooglaee Hucks held by the late Nawab, and the decision "on this claim will be communicated to you hereafter.

"5. As regards the claim to the continuance of exemption from the jurisdic-"tion of the civil and criminal courts of justice under this Presidency enjoyed "by the relations and servants of the late Nawab during his life, I am directed "to inform you that this right ceased from the date of his death, and that the "exercise of the right which the Nawab possessed to dispense justice, has also "become extinct in any but the ordinary courts of justice: these courts must, "therefore, take cognisance of all matters which during the life of the Nawab "and the recognition of his dignity would have been exempted from their "jurisdiction.

"6. As, however, all contracts and generally all money transactions entered "into by his relations and dependents were not regulated by the provisions of "the Bombay Code, since he was not bound, in the exercise of his independent "jurisdiction, to administer justice according to its enactments, and that "consequently the law of limitation on the time for prosecuting civil actions "(Regulation V. of 1827), and the Regulation Acts (Regulation IX.) of 1827, "and Act I. of 1843, were inoperative and unheeded by those over whom his "jurisdiction extended, the immediate application therefore of the restrictive "provisions of these enactments to persons who previously were exempted "from the jurisdiction of the civil and criminal courts became amenable to the "regulations on the death of the last Nawab, would necessarily prove preju-"dicial to those whose cause of action was of a date which barred the suit from "being entertained in the court, this subject is now under the consideration "of Government."

22. That, it appearing to your memorialist that the private property of himself and his family was to be disposed of upon the agent's report, and that it was but reasonable that your memorialist should be allowed to know the grounds on which his rights and interests were to be determined, your memorialist applied to the Honourable the Governor in Council for a copy of the agent's report, but his Honour in Council was pleased to inform your memorialist that his request could not be complied with.

23. That your memorialist being thus uninformed of the principles on which it was proposed to administer the late Nawab's estate, but it having been communicated to your memorialist as above mentioned, that the claims of your memorialist had been submitted to the Judges of the Suddar Adaulut, your memorialist was desirous of furnishing some information in support of his claims, when your memorialist was informed by the agent of the Honourable the Governor that your memorialist would himself submit the same to that court; but your memorialist has been unable to discover how the information is to be submitted, or that the claims of your memorialist have been referred to the judges in such a manner as to enable them to form a deliberate opinion on the subject; and your memorialist, therefore, trusts that before any opinion of the judges of the Suddar Adalutt on the right of your memorialist and his family is accepted as conclusive, your memorialist may be informed of the acts and circumstances laid before them for that opinion, and that your memorialist may have an opportunity of submitting whatever he may have to urge in support of his rights.

24. That

24. That your memorialist considers that his daughters are seriously aggrieved by the decision communicated to your memorialist in the letter above quoted, respecting the fees heretofore collected under the name of Wakyanigeera, which your memorialist claimed on behalf of his daughters. These fees had been enjoyed by the family of the late Nawab for nearly a century, and had been inherited by him on the death of his father, 20 years before his own decease. In consequence, however, of the heirs of an individual who had held the office at Wakyanigeera about a century ago, referring petitions to the Government of Bombay, laying claim to the fees attached to it, the late Nawab's grandfather obtained a nominal sunnud from Delhi, conferring the office of Wakyanigeera on the late Nawab's father; and on the cession of Surat in 1800, the Honourable the Governor indorsed a notification on this, that it is apparent from the history of Surat that, at the time the sunnud was granted, the office of Wakyanigeera (that is, recorder of the public events of Surat) for the use of the Court of Delhi had no existence, and that its duties could not be discharged, as the Court of Delhi had ceased to have any power at Surat, which had become tributary to the Mahrattas, and was quite unable to give effect to its sunnud, which was merely resorted to as an answer to the claims of the heirs of the person who had held the office when it was in existence. 2 May 1856.

25. Your memorialist further shows in support of his claim, that in the year 1830, the Government of Bombay, being desirous that some of the Wakyanigeera fees collected by the late Nawab should be relinquished, caused an investigation to be made into his rights, and finally it was arranged that a part of the fees should be relinquished on the Government guaranteeing to him and his descendants from generation to generation a fixed annual payment of rupees in lieu of them, thus not only binding itself to this payment to the descendants of the late Nawab in perpetuity, but also acknowledging that the Wakyanigeera fees were his private property, to which he and his descendants were entitled in perpetuity. And in further proof that these fees were always regarded as private property, your memorialist may adduce the fact that about twelve months before the demise of the late Nawab, the then agent of government at Surat complained that the collection of the fees occasioned disputes between the servants of government and the servants of the Nawab, and proposed that the fees should be valued, and that the Nawab should relinquish them on receiving their value in ready money; but the Nawab objected, on the ground that such an arrangement would be inconsistent with his dignity and respectability, as the fees had been inherited from his ancestors, and while he consented to give up the fees on receiving compensation, he desired that that compensation should be in land, and that it might devolve upon his descendants as the fees would have done.

26. Upon this the agent consented to give land in lieu of the fees; but while negociations were taking place with regard to the particular land to be given, the Nawab died, and the negociation came to an end.

27. That your memorialist not being informed of the ground on which the Government of Bombay declines to fulfil the engagement entered into with the late Nawab, and deprives his family of the property which he and his ancestors possessed for nearly 100 years, can only infer that the Government avails itself of the omission of words of inheritance in the sunnud above noticed; but your memorialist begs to point out that it was not the practice of the Court of Delhi to insert words of inheritance in sunnuds for offices; and that if the terms of sunnud, rather than the circumstances under which property was held at the time of the decay of the Mogul Empire, are to be regarded, it is probable that all property acquired during the rule of the kings of Delhi would have to be restored to the possession of Government; but your memorialist respectfully shows that the fees in question were in fact levied independently of the Court of Delhi, and were enjoyed as the hereditary private property of the late Nawab's family for nearly a century by the right of possession alone, with the acquiescence and sanction of the British Government since it obtained possession of Surat.

28. That your memorialist has not been informed of the result of the inquiries of the Honourable the Governor in Council respecting the moghlaee hucks and fees mentioned in the letter above quoted; but if it should be

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intended by the Honourable the Governor in Council to appropriate the hucks in the same manner as those fees levied under the name of wakyanigeera, your memorialist respectfully shows that moghlaee hucks are a well-known description of private property in land held by many persons in Guzerat, and that your memorialist has never yet heard the least doubts cast upon the rights of the holders of property of that denomination to enjoy it as their own.

29. That Ameero Nissa Begum, the widow of the Nawab, on the 18th of November 1846 was informed by the agent of the Honourable the Governor that a claim which she had preferred to the village Oonteyadra was not allowed by the Government; and your memorialist has since received the following letter from the agent of the Government of Bombay, dated 5th October 1847 :—

" With reference to my Persian letter to you of the 29th ultimo, on the " subject of the Wuzeefa village of Oonteyadra, I am desired to inform you " that Government has resolved to continue to withhold its recognition of the " sale of the said village to his late Excellency the Nawab of Surat; and " that the collector of Broach has been directed, unless some representative " of the original grantee be forthcoming, to claim the village as an escheat to " Government."

30. Your memorialist is thus informed that Government contemplates appropriating the village to itself, although the village was acquired by the widow and daughters of the late Nawab, under the following circumstances :—

31. In the year 1831 the village of Oonteyadra was purchased by the late Nawab for his widow and daughters, and the deed of sale by the previous owners of it was made in favour of the Nawab's widow and daughters; and in their names it has been by your memorialist shown to the agent that, being generally unable to interfere in business, the rents of the village were received by the servants of the Nawab, and were from time to time paid to the Nawab's widow and daughter, for their private purse; and it appeared that this purchase was at the time communicated to Government, and that the officers of Government had subsequently received the revenue annually from the Nawab's servants, during a period of eleven years, the Government thus acknowledging the right of the Nawab's family to the property, as against Government; and your memorialist believes that property of a similar character is daily bought and sold in Guzerat, without Government possessing any right to seize it; while, as regards the property in question, the purchase deed being in the name of the tenants' widows and daughters, those entitled to his estate can as such have no claim on the property.

32. Your memorialist having thus briefly stated some of the proceedings of the agent of the Honourable the Governor, by which the descendants of the late Nawab have been deprived of their private property, and by which they would have been reduced to utter destitution if they had not been able to resort to the protection of your memorialist's father, whose rank and character had induced the late Nawab to select your memorialist and his brother as the husbands of his daughters, when the Government declined to sanction their alliance with two princes of the royal family of Delhi; and though the late Nawab's family had received the most solemn assurances from the British Government, that his descendants from generation to generation would be maintained by that Government, which never failed in its engagements, the descendants of the Nawab were compelled to seek their support by borrowing money on the credit of your memorialist's father.

33. Your memorialist will not dwell upon the pain, and vexation, and loss of respect and reputation which have ensued from the proceedings above narrated, nor does your memorialist expect that your Lordship in Council will be able to afford him redress, or to decide on the rights of your memorialist and his family in a summary manner, your memorialist knowing well that they require the careful and patient investigation of some officer of Government accustomed to the consideration of such questions; but your memorialist trusts it will be sufficiently apparent to your Lordship in Council that no act should be passed declaring that whatever has been done shall be deemed to be right, so that all inquiry and redress, even at the hands of the agent specially constituted by the act to administer justice, shall be denied to your memorialist.

34. Your memorialist neither wishes that the rights of the family of the late Nawab should be tried in the native courts of justice, nor does he desire to sue the

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the officers of Government for those proceedings which the Honourable the Governor in Council in the letter above quoted has in effect stated to have been unwarranted and illegal; but your memorialist confidently relies on the sense of justice of the Government for redress for any complaint which he may desire to make, and your memorialist, therefore, humbly prays that your Lordship in Council will be pleased to alter the second clause of the draft Act, so that the agent may be at liberty to adjudicate upon the claims of your memorialist and his family in accordance with the principles of justice and right; and your memorialist respectfully submits, for the consideration of your Lordship in Council, the subjoined paragraph, to be substituted for the second clause of the proposed Act,—

"That the estate and effects of the late Nawab, and the administration "thereof, shall be exempt from the jurisdiction of the civil courts of justice, "and shall be under the authority of the agent to be appointed as aforesaid, "but subject to the control of Government; and that no action or suit shall be "brought in any court of law for any act done by the agent or other officer of "the Governor in Council of Bombay, at Surat, since the decease of the late "Nawab, respecting his estate or effects."

And your memorialist, as in duty bound, shall ever pray.

(signed) *Meer Jafur Alee.*

Surat, Palace of the Nawab,
14th April 1848.

Mr. *Rolt* was heard to open the case on behalf of the petitioners, and delivered in the accompanying Index to the documents which he proposed to produce and read as evidence:

NAWAB OF SURAT TREATY BILL.

INDEX to DOCUMENTS produced and read on Behalf of the EAST INDIA COMPANY, on 2 May 1856.

PAGE.	DATE.	FROM WHOM.	TO WHOM.
1	1759 - - -	Treaty.	--
2	6 May - 1798 -	M. Seton, agent at Surat, with translation of agreement with the Nawab of Surat.	Governor of Bombay.
4	18 April - 1799 -	Governor Duncan - - -	M. Seton.
5	14 August - „ -	Meerhussoodeer - - -	Governor of Bombay.
10	5 October - „ -	- ditto - - - -	- ditto.
12	26 October - „ -	M. Seton - - - -	Governor Duncan.
	11 November „ -	- ditto - - - -	- ditto.
	19 „ „ -	- ditto - - - -	- ditto.
13	20 „ „ -	- ditto - - - -	- ditto.
14	23 „ „ -	Governor Duncan - - -	M. Seton.
15	25 July - 1800 -	- ditto - - - -	Minute.
36	18 August - 1799 -	M. Seton - - - -	Governor Duncan.
37	1854 - - -	Meer Jagar Ali - - -	Petition to the Queen in Council.
55	15 August - 1842 -	Governor Sir George Arthur -	Minute.
56	16 „ - „ -	M. Reid, Secretary, Bombay -	W. Elliot, Agent at Surat.
57	10 September „ -	W. Willoughby, Political Secretary, Bombay.	Memorandum.
58	18 October - „ -	Sir George Arthur - - -	Minute.
59	5 November „ -	M. Blane, late agent at Kattewar	W. Willoughby, Secretary at Bombay.
67	18 April - 1843 -	Hon. Mr. Anderson - -	Minute.
69	24 April - „ -	Sir George Arthur - - -	- ditto.
70	10 June - „ -	Mr. Willoughby, Secretary, Bombay.	W. Thomason, Secretary to Governor of India.
74	20 September 1843 -	Court of Directors - - -	To Government of Bombay.
75	22 June - 1844 -	Sir R. K. Arbuthnot, agent at Surat.	To Government Secretary, Bombay.

[Adjourned to To-morrow, at Eleven o'Clock.

Sabbati, 3° die Maii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

3 May 1856.

Mr. *Rolt* was further heard to open the case on the part of the Petitioners, and delivered in the accompanying Index to the documents which he proposed to produce and read as evidence.

NAWAB OF SURAT TREATY BILL.

INDEX to DOCUMENTS produced and read on behalf of the EAST INDIA COMPANY on 3 May 1856.

PAGE.	DATE.	FROM WHOM.	TO WHOM.
1	22 August - 1842 -	Bombay Government - -	Court of Directors.
2	28 „ - „ -	Mr. Elliot, Agent, Surat -	Secretary, Bombay.
8	15 November „ -	Sir R. R. Arbuthnot, Agent, Surat.	- ditto.
9	24 February 1844 -	Secretary, Government of India	- ditto.
10	9 April - „ -	Agent, Surat - - - -	- ditto.
15	4 September „ -	Court of Directors - -	Government of Bombay.
15	3 November 1845 -	Agent, Surat, with enclosures -	Secretary, Bombay.
205	12 August - 1846 -	Honourable Mr. Willoughby -	Minute.
208	8 September „ -	Honourable Mr. Reid - -	Minute.
209	10 October - „ -	Secretary, Bombay - -	Agent at Surat.
219	10 „ - „ -	- ditto - - -	Registrar of Sudder Dewany Adawlut.
221	28 „ - „ -	Mr. Harrison, Registrar of Sudder Dewany.	Secretary, Bombay.
223	8 February 1847 -	Sir George Clark, Governor, Bombay.	Minute.
224	10 December 1846 -	Registrar, Sudder Dewany -	Secretary, Bombay, with Draft Act.
226	12 April - 1847 -	Honourable Mr. Reid - -	Minute.
227	12 May - „ -	Mr. Larkin, Registrar, Sudder Dewany.	Secretary, Bombay.
229	1 September „ -	Mr. Malet, Secretary, Bombay	Secretary, Government of India.
230	30 „ „ -	Government, Bombay - -	Court of Directors.
233	5 February 1848 -	Proposed Act.	
234	4 March - „ -	Governor, Bombay - -	Minute on Act.
235	11 „ - „ -	Meer Jafur Ali - - -	Bombay Government.
236	15 „ - „ -	Court of Directors - -	- - - ditto.
240	10 April - „ -	Secretary, Bombay - -	Secretary, Government of India.
241	5 July - „ -	Meer Jafur Ali - - -	Memorial to Governor of Bombay.
245	23 October - „ -	Secretary, Bombay - -	Mr. Andrews, Agent at Surat.
247	19 December „ -	Governor of Bombay - -	Minute.
251	21 November 1850 -	Government of India - -	Bombay Government.
252	25 September 1852 -	Government of Bombay -	Minute.
253	17 November „ -	- - ditto - -	- ditto.
254	3 June - 1853 -	- - ditto - -	- ditto.
261	21 June - „ -	Honourable Mr. Blane - -	- ditto.
262	8 March - 1854 -	Mr. Hebbert, Agent, Surat -	Report.
267	11 April - „ -	Bombay Secretary - -	Agent, Surat.
269	30 March - 1855 -	Government of Bombay -	Minute.

[Adjourned to Wednesday next, at Eleven o'clock.

Mercurii, 7° die Maii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

7 May 1856.

Mr. *Ayrton* was heard to sum up the case on behalf of the Promoters.

[Adjourned to To-morrow, at Eleven o'clock.

Jovis, 8° die Maii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

Mr. *Ayrton* was further heard to sum up the case on behalf of the Promoters. 8 May 1856.

[Adjourned to To-morrow, at Three o'clock.

Martis, 20° die Maii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

The *Chairman* stated that the Committee wished to be informed whether a political agent was a judge. 20 May 1856.

Mr. *Ayrton* stated that he was not, unless he was invested with the authority of a judge by some regulation; that in the ordinary case the political agent would be merely like a minister at a foreign court.

Mr. *Melvill* stated that the political agents and the sudder judges were taken from the same body of men, and that a man might be shifted from his position as political agent to that of sudder judge.

The *Chairman* inquired on what occasions and by what authority it had been customary for a political agent to act as a judge?

Mr. *Ayrton* stated that the great cases were with regard to what was formerly called the Deccan and the Southern Mahratta Country; that a Regulation was passed for the Deccan, and then a subsequent Regulation was passed for the Southern Mahratta Country, in consequence of which in both cases the political agents exercised judicial functions; but that it also appeared, from a case in which there was an appeal to the Privy Council, that they had exercised judicial functions even before the Regulations were passed.

The *Chairman* inquired whether the habit of a political agent becoming a judge was limited to the Deccan and to the Southern Mahratta Country?

Mr. *Ayrton* stated that he thought it was so.

Mr. *Melvill* stated that he did not think that was the case.

Mr. *Ayrton* stated that if a political agent were to act judicially by order of the Government in any particular case to which the Regulation did not apply, the question would then arise whether his act was a judicial act or not.

The *Chairman* inquired whether, when a political agent by special directions from the Government, undertook functions of a judicial character, an appeal would lie ultimately to the Privy Council?

Mr. *Ayrton* stated that he did not know of any such case.

The committee-room was cleared.

[Adjourned to Monday next, at Eleven o'clock.

Lunæ, 2° die Junii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

2 June 1856.

The *Chairman* stated that the Committee had decided that the Preamble had been proved, but that the Committee proposed to make certain amendments in it; and he then proceeded to read the Special Report which the Committee had resolved to make to The House.

Mr. *Rolt* applied to the Committee for an adjournment previously to going into the Clauses.

Mr. *Hope Scott* stated, that on the part of the Promoters he had no objection to an adjournment, and that he invited the Petitioners to confer with him, in order to save the Committee any further trouble.

After a short discussion, Mr. Rolt having consented to submit certain Clauses to the Promoters,

The *Chairman* stated that the Committee had decided to adjourn to Thursday next.

The *Chairman* stated that it had been the intention of the Committee to leave open to absent parties the right of disputing the legitimacy of Bukhtyan-oolnissa Begum, from which the East India Company had hitherto excluded them; but the Committee were not quite certain whether they had expressed that intention with sufficient clearness.

Mr. *Rolt* stated that he would look to the Preamble to ascertain whether that had been done.

Adjourned to Thursday next, at Eleven o'clock.

Jovis, 5° die Junii, 1856.

THE RIGHT HON. EDWARD CARDWELL, IN THE CHAIR.

5 June 1856.

The Clauses of the Bill were severally read and agreed to, amendments being made therein.

The Chairman was directed to report the Bill, as amended, to The House.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

NAWÁB OF SURAT TREATY BILL.

Ordered, by The House of Commons, *to be Printed,*
9 *June* 1856.

[*Price* 1*s.*]

265

Under 16 *oz.*

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

NAWÁB OF SURAT TREATY BILL.

DOCUMENTS PRODUCED BY MR. ROLT ON BEHALF OF THE PETITIONERS.

PART I.

Ordered, by The House of Commons, *to be Printed,*
9 *June* 1856.

NAWAB OF SURAT TREATY BILL.

INDEX to Documents produced and read on behalf of the East India Company, on 2 May 1856.

PAGE.	DATE.	FROM WHOM.	TO WHOM.
3	- - - 1759 -	Treaty.	
3	6 May - 1798 -	Mr. Seton, agent at Surat, with translation of agreement with the Nawab of Surat.	Governor of Bombay.
5	18 April - 1799 -	Governor Duncan - - -	Mr. Seton.
6	14 August „ -	Meer Nusseeoodeen - -	Governor of Bombay.
9	5 October „ -	- - ditto - - - -	- - ditto.
10	26 „ - „ -	Governor Duncan - - -	Mr. Seton.
	11 November „ -	Mr. Seton - - - -	Governor Duncan.
	19 „ - „ -	- ditto - - - -	- - ditto.
11	20 „ - „ -	- ditto - - - -	- - ditto.
12	23 „ - „ -	Governor Duncan - - -	Mr. Seton.
12	25 July - 1800 -	- - ditto - - - -	Minute.
27	18 August 1799 -	Mr. Seton - - - -	Governor Duncan.
27	- - - 1854 -	Meer Jafur Ali - - -	Petition to the Queen in Council.
39	15 August 1842 -	Governor Sir George Arthur -	Minute.
39	16 „ - „ -	Mr. Reid, Secretary, Bombay	Mr. Elliot, Agent at Surat.
40	10 September „ -	Mr. Willoughby, Political Secretary, Bombay.	Memorandum.
41	18 October „ -	Sir George Arthur - -	Minute.
42	5 November „ -	Mr. Blane, late Agent at Kattewar.	Mr. Willoughby, Secretary at Bombay.
47	18 April - 1843 -	Honourable Mr. Anderson -	Minute.
49	24 „ - „ -	Sir George Arthur - -	- ditto.
49	10 June - „ -	Mr. Willoughby, Secretary, Bombay.	Mr. Thomason, Secretary to Government of India.
52	20 September „ -	Court of Directors - -	Government of Bombay.
52	22 June - 1844 -	Sir R. K. Arbuthnot, Agent at Surat.	Government Secretary, Bombay.

NAWAB OF SURAT TREATY BILL.

Veneris, 2° die Maii, 1856.

DOCUMENTS produced by Mr. *Rolt* on behalf of the PETITIONERS.

Atchund's Seal.

ARTICLES of AGREEMENT made with Meah Atchund, at Surat, in 1759. 2 May 1856.

AGREEABLE to your desire, I sent a person to you, by whom you advised me verbally of your demands, and, with sincerity of heart, I now write the particulars I can agree to, which are as follows:

Articles.	Wrote by the Nabob over each Article.
Art. 1.—The Faris Khan shall be appointed to the office of Naib in its greatest extent, as in the time of Sufdir Khan, and nobody but himself shall interfere in the said post.	Art. 1.—Agreeable to this article, I fully consent to Faris Khan's appointment.
Art. 2.—That whatever articles Faris Khan has given in writing or promised to the Honourable Company, the particulars of which cannot be drawn out at present, and must be deferred till we can meet, shall be fully complied with, without the least diminution.	Art. 2.—Whatever Faris Khan has wrote, or promised to do for the Honourable Company, I will stand to without the least alteration.
Art. 3.—That the Mecha Gate shall be opened, our troops admitted, and we shall join our forces to drive our enemies out of the town.	Art. 3.—The Mecha Gate shall be opened, your troops admitted and joined by mine, to drive out the enemy.
Art. 4.—The above articles a person in your behalf demanded; all which I agree to and will comply with, and the government shall be continued to me in full authority; and to the above I have put my own seal, and Meer Cootbodeen will sign and seal the same, after which you must send a counterpart of this writing, with the Honourable Company's seal affixed.	Art. 4.—Agreed to, and that we shall act jointly in turning our enemies out of the town. (Wrote by Cootbodeen.) Whatever the Honourable Company have demanded, I agree to. Cootbodeen's Seal.

A counterpart of the above articles were sealed with the Honourable Company's seal and sent to Atchund, the 4th March 1759.

Honourable Sir,

EVER since the orders of Government of the 28th February 1797, I have been persuading the Nabob to come into your wishes; and when I forwarded you a copy of the report of my negotiation with him, dated the 22d May, I acquainted you I did not despair that by your return I might prevail on his 6 May 1798.

2 May 1856.

Excellency to make concession; at least, such should be my endeavours in my intercourse with him.

In consequence of your repeated commands on this subject since your return from the Malabar Coast, I have been engaged in a negotiation with the Nabob, as I have from time to time noticed to you. I have strongly and forcibly held forth the arguments you furnished me with the means of stating to him as the sentiments of Government and yourself, added every point local knowledge makes me master of to influence him, and last night urged and advised him, as his friend, to comply, as far as his circumstances and the revenues of his Government would allow him, the means to alleviate the Honourable Company's expenses in support of the Castle and City of Surat.

In general terms he avows his attachment to the Honourable Company, acknowledges his dependence on them, his strict adherence to the terms of the treaty of his grandfather, pleads poverty, says his enemies had given exaggerated accounts of his revenue, that his income by no means aggregates equal to public report; complains of the defalcation thereof by the knavery of his servants, the depression of his finances by the amount he pays annually to liquidate his father's debts. To combat these excuses, I have made your instructions of the 1st March 1797 the basis of my conduct towards the Nabob; and by fair, civil, conciliatory argument and presentation, I have prevailed on him to make a donation to the Honourable Company of one lac of rupees annually in perpetuity, which he is pleased to say he grants at the instance of my friendly persuasions, and which, consequently, carries along with it his real assent, without my using anything like threats, which, considering his entire dependence for support on the Honourable Company, would, I humbly presume, be unbecoming me, their representative on this occasion.

This grant does not equal your expectation, but, from my acquaintance and knowledge of the Nabob and his revenues and expenses, I really am convinced nothing short of compulsion could extort from him a more considerable concession, more particularly when it is also considered his relinquishing in perpetuity the mocant on the piece goods of the Company's investment and the Durbar charges. Should you approve of this grant, I enclose translate of a deed he wishes to execute; and he has desired me to acquaint you he will receive me at the Durbar the first lucky day after your approval arrives, to make an exchange of the written instrument.

Having thus once more successfully used my influence and exertions for the benefit of our honourable employers in prevailing on the Nabob to make them a free concession, I have only to observe, that the present one exceeds by 22,871 rupees per annum the net annual produce of the whole of the castle and tank revenues which on the close of the last books stood at *Rs.* 77,129. 1. 35., and it is not a little gratifying to my feelings to reflect on the advantage that must result therefrom to the Honourable Company, and my having had it in my power to render them such an essential service.

I am, &c.

Surat, 6 May 1798. (signed) *Daniel Seton.*

(Translate)

AGREEMENT to be entered into, by and between his Highness Coimuddowlah Meer Nizamuddin Khan Bahader, the Nabob of Surat, on one part, and *Daniel Seton*, Esq., Chief for and on behalf of the Honourable United English East India Company, on the other part, viz.:

1. THAT the treaty made by the late Mr. Spencer with the Nabob Moimuddein Khan in the year 1759, stipulating that the government of this city shall be secured to the children of the said Nabob from generation to generation, and that we should join our forces against our mutual enemies and defeat them, and the castle with its revenue, and the armed vessels as taken from the Sudees, should be put in the hands of the Honourable Company, and for the future the absolute government of the city should be in the hands of the Nabob, should continue in full force and virtue.

2. That

2 May 1856.

2. That not any of the gentlemen in the Honourable Company's service shall hold any intercourse private or public with any of his Highness' officers, mutsuddus, and all the Company's bahaders, business to be communicated and managed between the Nabob and the Chief.

3. That some of his Highness' officers, &c., have made encroachments and embezzlements of his Sircar, and they bear suspicious characters, therefore his Highness proposes to settle accounts with them, and make necessary arrangements, for which the Chief shall afford his ample and zealous support to the Nabob.

4. That the Nabob engages to support his usual body of sepoys, and keep them in good order.

5. That the Chief shall refer all petitions and complaints, whatever may be, from his subjects to the Nabob alone for to be decided on agreeably to the laws of the country, conformably to the usage of the respective castes, with equity and justice; all punchats when necessary to be held at the Durbar and nowhere else; and the Nabob shall report the process on all such petitions and complaints to the Chief.

6. That his Highness the Nabob, after consulting the Chief, Mr. Seton, and being sensible of his good advice and friendship of many years' duration to his father and himself, and relying on a continuance thereof, his Highness is pleased to grant to the Honourable Company one lack of rupees per annum, in perpetuity, for to assist the expense they incur for the support of the castle and city, to be paid in quarterly payments; but as his present revenue does not afford this additional annual charge, he may be allowed in a moderate degree to increase such mocants as can bear it; but no increase on the necessaries of life is to be put, or no alteration in the mocants to be made without the consent of the Chief; the Honourable Company being guarantee for the Mahrattahs not claiming an equal or similar payment.

7. That the counterpart of this agreement to be signed, sealed and exchanged by the agreeing parties aforesaid, the Nabob and the Chief in Surat, this May 1798.

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18 April 1799.

EXTRACT of a LETTER from Mr. *Duncan* to Mr. *Seton*, dated the 18th April 1799.

I SEND an answer to the would-be Nawab's letter, which I have not addressed to him in the style of a person confirmed in the succession, but merely in his former capacity of Meer Nusseeriddien.

The ground I have taken is, I think, strictly correct, because as he rests upon treaty, so do I, in claiming the right of reinstating the Nawab; and the petition lately presented, without any invitation on my part, from the son of Pharis Khan, and sent up to you to report on, may, I trust, enable you so far to act on this successor's fears, as to make him think it advisable to come into our terms. Indeed, I am sorry we did not at once insist on the net sum of two lacks, which is no more than he ought to give to insure his succession, and to prevent our appointing a Nawab, which we have as clear a right to do as he has to become Nawab, or to enjoy the fruits of our protection to his family and himself; both points stand equally specified in the treaty, which you may desire him to peruse, and let him at the same time know, that our having once forborne for a time to exercise that right, by no means does away our undoubted title to resume the same whenever we think fit; you may deliver my letter (a translated copy of which accompanies this) as privately as you please, for I have no desire to hurt his feelings, but would, on the contrary, do everything to gratify him, provided he be reasonable on his part.

N. B.—The letter in question stands already on the records of government.

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2 May 1856.

14 August 1799. TRANSLATION of a LETTER from Meer Nusseeredeen to the Governor, dated 12th of Rubbee alwul 1214 (14th of August 1799), of the Hezree, and received the 23d of August.

I HAVE had the honour of receiving your letter of the 13th of Zecade 1213 (18th of April 1799), of the Hezree, and am become acquainted with its contents, and as that honoured communication appears to comprehend several points exciting doubt and hesitation, I reperused it, and on attaining to a full view of its tenor, my astonishment became excessive and my mind replete with anxiety. You are, sir, well apprised of my situation, since everything that has passed must no doubt stand entered on the Company's records, which the representation of my condition which I forwarded to you, some months after my brother's death, must no doubt have brought all circumstances under your notice; wherefore, to write over again all those particulars, would be putting you to unnecessary trouble, which, considering how constantly your attention is occupied in the Company's affairs, I should not think justifiable on my part, did not the contemplation of your letter convince me of the necessity of replying on different heads, so that after requesting your permission, I beg leave to notice what follows; since it is requisite to remove doubts between those embarked in a common cause, with a view to prevent misconceptions.

To proceed, then, as you have written about the Neabut, I have to represent that when Mr. Spencer arrived at the Bar of Surat with Pharis Khan, the Nabot Mayeneddeen Khan, my grandfather, who stood from former times connected in friendship with the English, abandoned his connexion with Seedee Ahmed and joined the Honourable Company; and confiding in the permanency of the stipulations of the gentlemen, he considered this step as conducive to his own and his family's advantage, and accordingly opened the gates of the city at the critical moment, and introduced the Company's army, and established them in the castle; and as Mr. Spencer was importunate with my grandsire, in representing that from having brought Pharis Khan along with him, he was ashamed to leave him without provision, and therefore entreated that to save the Honourable Company's credit, the Khan in question might be appointed to the Neabut. My ancestors, considering that the hakim's share of the phoorza exceeded 75,000 rupees, and sufficed for the defraying out of it the expense of the Neabut, consented to the institution of that office in view to the Honourable Company's credit. But in process of time Pharis Khan's oppressions in the city, and his embezzlements in the phoorza, and the improper acts toward the ryets of his son, and of a Persian moghul called Aka Tukee, proceeded to a considerable extent, insomuch that his suspension was meant and intended; but in deference to the Honourble Company's word, patience was resorted to, when at length it pleased the Divine Disposer of events to remove the abovenamed Khan from the world, after which several members of the Council here interested themselves to the utmost with my father to cause the Neabut to be bestowed upon Ali Newauz Khan, and abundance of epistolary correspondence reached on this subject to the Presidency, and much exertion and endeavours were used to prevent this proposed Nayb's succession, with all which you are, sir, no doubt become acquainted from the books of council of those times, wherein the particulars must of course stand inserted, but the result was, that in consideration of the interest the English gentlemen took in his favour, Ali Nowauz Khan was constituted Nayb; yet, as from the revolution of events, the decrease of trade, and various untoward circumstances, the income of the phoorza began to decline, and fell from 70 to 30,000 rupees; the payment of the Nayb's dues became on this account extremely burthensome, and Ali Nowauz dying also in the meantime, my father took that opportunity to represent to the gentlemen composing the Government of Bombay the defalcation in the public income, and the particulars of his situation; wherefore, the gentlemen in power at this Presidency were pleased, in consideration of the old fidelity, and to the confidence they knew was to be reposed in my house, to discontinue the Neabut; wherefore, how can you, sir, at this particular crisis, when the phoorza does not even yield 30, but has fallen to 15 and 18,000 rupees, think of burthening me with the expense of the Neabut during three descents? We have not committed one single act contrary to the good-will and gratification of the Honourable Company, besides whom we know no other

power

power or authority; under which circumstances, for what offence is it considered suitable and befitting to inflict such a degradation on my credit, as it is worse than death; since in the appointment of a Nayb is comprehended a heavy pecuniary loss, as well as personal discredit to your well-wisher, without the smallest advantage to the Honourable Company; and supposing it even attended with innumerable advantages, but unsuitable and unacceptable to the intimate friends of the Honourable Company, such is not a course fit to be proceeded in by a gentleman of your good name. How, then, can you adopt so unprofitable a project? Wherefore, as far as regards this institution of the Neabut, which has filled my mind with alarm, the not proceeding therein is extremely proper, because it is a fundamental principle of the original settlement that neither on my part shall any unbefitting act take place, nor, in regard to us, on that of the English; and, finally, the Company prefer the keeping of their word to every other consideration, and look upon money as an inferior object. 2 May 1856.

Be it further known that the late Nawaub, my brother, forwarded to you a faithful and accurate account of the receipts and disbursements of his household, which must have passed under your notice, and he laid a similar copy thereof before the chief, Mr. Seton. But great is the difference between these statements and those exhibited by Mr. Farmer, for all the personal (Khas) receipts of my sircar amount on every account to 3,35,000 rupees, of which there is annually paid to the chowties the sum of 54,000 rupees, and that of 12,345 rupees is applied annually towards the junkha, or assignment for the castle and fleet, according to ancient usage, after which, of whatever remains, something is given to powerful creditors, such as haffisers (perhaps officers) and others; and out of the residue the expense of guarding the city is likewise to be provided for, together with that of my own maintenance and the support of my family and dignity, respecting all which no superfluous extent of charge is gone into, nor can any diminution of outlay be ever in these respects effected, notwithstanding that by the end of the year the funds prove unequal to it; nor has any part of the debts incurred by my father and deceased brother, and left by them unsatisfied to the amount of nearly three lacs of rupees, been yet liquidated. The Chief, Mr. Seton, did, it is true, insist much with my brother as well as with me to assist the Company annually to the amount of 2,25,000 rupees; and that you may judge what value I set on money, I declare truly that if possessed of the means I would, for the mere sake of recommending myself and gaining credit, have furnished the quadruple of what was thus asked; but through want of means I have with the utmost reluctance and confusion been compelled to give for answer, that through the assistance of the Chief I may be able to raise for the Honourable Company a lac of rupees, whereas but for the aid of his good counsel and support, I would myself have been able to raise nothing; and there being for this purpose no funds in my own house. After much search two have been found, one in the tax on spirituous liquors, and the other in that upon tobacco, and if it please God from those two sources the afore-mentioned amount shall be levied and paid, which cannot be expected from the produce of the other farms that are annually in a state of progressive defalcation. Be it therefore explicitly understood that I adhere to the lac of rupees which stands specified in my letter to the Chief, but that beyond that sum I have not the means of paying a single rupee, nor can anything farther have effect. By the favour of the Almighty, the Honourable Company is an ocean; and we people are mere water pitchers, pouring the contents of which into the ocean, it will not be replenished whilst the poor pitcher remains empty. When I delivered this fixed and final answer to the Chief, the latter observed that the Governor would not be satisfied with a lac of rupees, and desired more. But be pleased, kind sir, to consider that I cannot do more, and am helpless, the times being so bad, and defalcation having ensued, insomuch that even what I have agreed to is a burthen on me, at the same time that by every exertion in my power I shall not fail to act up to the word I have passed to the Honourable Company. But let it also be attended to, that the income of my government depends on the dignity of the ruler and the energy of his administration over the subjects, in which respects some anxiety intrudes itself; and from the delay in the experience of your kindness, it strikes me that my opponents have been infusing unfounded notions and erroneous ideas into your mind as to the amount of my income, and the predicament of my government; but I rely on your just discernment not to suffer yourself to be impressed

2 May 1856.

with such improper relations; nor have evil, designing men and backbiters ever found favour with the wise. When the business of the subsidy to the Honourable Company was first agitated, my late brother advised with me on the subject, observing, that in the first place he had no means; and if with the greatest exertions he should now contrive any new expedient, the original agreement between the Company and his ancestors might thereby become implicated, on which account he entertained a great share of repugnance. Nor was, after his death, my mind freed from anxiety on the same score, till the Chief assured me that an acquiescence on my part could occasion no alteration or difference in the former stipulations, but would, on the contrary, tend to the enhancement of my credit with the Honourable Company, as well as occasion the greatest satisfaction to the governor; through which persuasions of his I was encouraged to agree to a lack of rupees, which I am providing for by the means above specified. By the favour of God, the mutual faith and confidence between both Governments remain stable and permanent, and these requisites are necessary to be respected on both sides. Now, according to every religious dispensation, I am the heir of the place of my father and grandfather, and the intimate associate and well-wisher of the Honourable Company, and am fully convinced that the permanency of my government, and of my power and authority, and the well-being of my family, are owing to the kind and favourable countenance of the Honourable Company; and therefore I cannot but greatly wonder that to this day the usual congratulations respecting my succession to my hereditary musnud hath not been received. Wherefore let not procrastination be used in bestowing this favour, but let the Chief be instructed on this point as speedily as possible.

I have moreover heard that the heirs of Pharis Khan have been with you to prefer an unjust claim against me. It is a matter known to every one that the people of Pharis Khan are the hereditary enemies of my house, wherefore I am at a loss to account for your listening to their incoherent clamour. These people will no doubt say, for their own ends, a thousand things remote from the purpose: heretofore all their business was adjusted by the equitable inquiry of the Chief and Council at that time, and a farigh khutty or deed of acquittance taken from them, which having passed 27 years ago, all those who were well informed of their family are now numbered among the dead, and how can they now expect to obtain from me what they could not succeed in, either in my father's or brother's time? My right is just.

I have further to represent that the officers of the court of justice at Bombay have begun their schemes in such a way as to harbour intentions to interfere with my subjects. Kind sir, such an event must tend to my utter disgrace with my subjects, and also to the diminution of my income, and thence to induce a failure in my stipulations with the Honourable Company; it is also most repugnant to right and reason that the institutes and dispensations and the permanent rules of one city should be observed and have course in another. My subjects have discerned and perceive that I am unsupported by the Government of Bombay, and that the tales and relations of my enemies are listened to, points which I consider as of the greatest severity on me. Be it considered, that although in all countries the government of the Hindoos and Mahomedans be in force, yet in no place do the subjects experience such favour and kindness as they do here, notwithstanding that my enemies are assiduous to represent in these respects the direct contrary, which wears not a good appearance.

Be it known that the Hakin of Surat is the ally and well-wisher of the Honourable English Company, as long as the Company remains in power; the Hakin, also, supported by the Company, is without anxiety; and such being the case, it is befitting the Company to attend to the Hakin, and that remaining firm and favourable, nothing new introduced on former adjustments; because my ancestors allied themselves to the Company in view to the advantage of their estate, and the permanency of their government to their posterity, and of whom they committed to their fostering care, and in full reliance thereon left in entire tranquillity of mind this transitory world.

Let it be also considered, that my ancestors have performed material service to the Company's Government since it was here, in the Castle of Surat; that as the first of all their acquisitions in the country of Guzerat, and even of India in general, their flag was displayed, and now by the grace of God they are established in all the four quarters, and may do as they list. Heretofore, also, when

on the occasion of the war at Tullaya Sultaun Poor, &c. they despatched troops; and thereafter, when they proceeded against Broach, and subsequently towards Poona, at all these times they got from this supplies of oxen, grain, &c.; and many remittances were effected through the care and exertions of Mr. Boddam and of my father to and from Bengal; and in these few last years Mr. Seton has effected likewise many similar money negotiations, and the Honourable Company's investment has increased within these latter years to a large extent, and from first to last my family have joined and offered their co-operation and assistance, as they still do; wherefore if a critical attention be paid to these circumstances, Surat is of advantage in several respects to the Company, and not a place whereby they incur loss. 2 May 1856.

I trust to be speedily favoured in your kindness with a desirable answer to this address.

(signed) *Meer Nusseeredien.*

From Meer Nusseereddien Khan, Brother of the late Nabob of Surat, to the Honourable *Jonathan Duncan*, dated (5 Jemadyulavul) 5 October; received 11 October 1799. 5 October 1799.

After compliments.

As a long time has now elapsed since I have enjoyed the happiness of hearing from you, I take the liberty of assuring you, honourable sir, that though I feel the most perfect reliance in the continuance of your kindness and favour, and the firmest conviction that your final arrangement of my affairs will be most satisfactory in every respect, nothing can afford me a higher pleasure than the favour of your frequent correspondence, did it merely convey to me the agreeable accounts of your health and welfare.

Praise be to God, who has distinguished the auspicious era of your government with an event which the most sanguine could hardly have looked to at less than the work of ages employed in the most gigantic efforts, directed by the most consummate skill; I mean the total overthrow and extinction of that mortal enemy of the British nation, Tippoo Nayk, and the subjugation of the whole of his dominions; a conclusion so rapid and complete, as to reflect for ever the highest lustre upon the wisdom upon your councils, the efficacy of your determination, and unparalleled glory upon the whole period of your administration. Amidst the moments of exultation produced by the mortal event, let me beg for an instant to recall myself to your warmest transport, and by praying before the throne of God that the effects may be as beneficial to the interests as the victory itself is honourable to the arms of the British nation, may such be their fortune in every just war in which they are engaged.

I have likewise had the satisfaction to hear that the combined forces of his Britannic Majesty and the Sublime Porte have gained the most decisive advantages over the French in Egypt, and have ultimately succeeded in expelling them from that country, such of them as could throwing themselves on board of boats and making a precipitate escape. Should you, as I earnestly hope, be able to give me a confirmation of this intelligence, I shall lose no time in offering my thanksgivings to the Dispenser of all Blessings for this happy result of the united efforts of their Majesties' arms.

Accompanying is a khereeteh to the address of Lord Mornington, containing my humble congratulations on the success of the late war in Mysore, and the total extinction of that old and implacable enemy of the English nation, Tippoo Nayk, which I beg you will do me the favour to forward. I enclose a copy of this letter for your own information.

From Meer Nusseereddien Khan (styling himself Mutsuddy of the City of Surat) to the Right Honourable the Earl of *Mornington*, Governor-General (without date), accompanying his Letter to the Honourable *Jonathan Duncan*, of the 5th October 1799.

After compliments.

Praise be to God, the fountain of all victory, the day-star of his Britannic Majesty's fortune and unperishable renown has risen to the blazing zenith of

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the pure empyrean of glory, from which it has dispelled the pitchy darkness of perfidy and the tartarean umbrage of infatuated malice. The kingdom of Mysore and its capital, Seringapatam, whose fate has been long due, has fallen a sacrifice to the faithless duplicity of its late ruler, accelerated by the valour of British troops and the decisive energy that directed their operations, and which characterises all the measures of your Lordship's illustrious administration. Your ancient and implacable enemy has at length paid the forfeit of his crimes, his relentless and tyrannical cruelty, and his violation of every principle that binds the most iniquitous of mankind. May He who is the Author of all good render the effects beneficial, as the victory is great, and crown with the like distinguished success the issue of every just war in which you are engaged.

He who adds his feeble voice to the burst of triumph is the third generation of some of the most faithful allies and dependents of the British Crown, whose house has been ever connected by the strictest and most intimate ties of friendship with the Honourable Company, and whose daily prayers are offered up for the welfare and prosperity of the British nation.

As such he hopes that this humble tribute of his sincerity and affection may not be deemed unworthy of a reply.

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26 October 1799.

Extract of a Letter from Mr. *Duncan* to Mr. *Seton*, dated 26 October 1799.

The Nabob (or rather candidate for the Nabobship) has sent me a letter of congratulation to Lord Mornington, as per copies of the translates herewith transmitted, in which, without ceremony, he has gratified himself Mutsuddy of Surat, which is improper, as whatever rights he may possess, his ancestors never considered themselves as properly in office till seated on the musnud by our authority. He need not, therefore, expect any answer from Lord Mornington under this title of Mutsuddy, although I have no doubt his Lordship would readily acknowledge his letter if unattended by this objectionable and unusual and premature arrogation of title on his part, which he does not even venture to use in his letter to me that accompanies the one to the Governor-general.

Extract of a Letter from Mr. *Seton* to Mr. *Duncan*, dated 11 November 1799.

I am concerned Nusseerddien should have wrote the letters you mention, without communicating with me on the occasion. He says in vindication, that as they did not regard Surat affairs, there was no need to trouble me with more letters of compliment. However, this circumstance makes me suspect he would not be apprehensive, perhaps, either of your or my displeasure, by his entering on a correspondence with the Governor-general. He also contends his using the title of Mutsuddy does not mean that of Nabob, and that nothing but the station he now occupies could warrant the liberty he took in addressing his Lordship.

Extract of a Letter from Mr. *Seton* to Mr. *Duncan*, dated 19 November 1799.

It is with some degree of pleasure I announce to you the will of God is done, and the old Seedee Jaffer has finished his career in this world, which with some confidence opens a field for my further exertions to answer your wishes and benefit our honourable employers. I declare to you such is my drift, and no personal consideration shall stop my way. You nevertheless must support me, and not hamper me with expectations more than possibilities or even probabilities to attain. Leave me to myself to work the candidate.

This deceased leaves behind him only one granddaughter, recently married to a Mogul not in our protection. All his wealth, said to be immense, is acquired by the Company's influence, he being daroga since we took the castle. I declare I think the Company entitled to be, in a general sense, his heirs; but this

this is only my private opinion, and probably merits your consideration. Some time ago I hinted this to the old man, who smiled, and asked me if Mr. Spencer Hodges or Hornby gave their fortunes to the Company? I observed, their case was different: they had children, he had none. He said he was poor. The rumour of the day is, he has left his wealth to the Company; and in an escritoir he selected all his papers, which he directed to be sent to me on his demise. I hope in God something of the kind is the consequence.

This I am sure of, that it strengthens my power over Meer Nusseeredien; and rely on my exertions in favour of the Company on this occasion. Pray be fully explicit and candid, and be assured I will exert myself to the utmost to obtain your approbation.

Extract of a Letter from Mr. *Seton* to Mr. *Duncan*, dated the 20th November 1799.

I beg leave to lay before you copy of a letter from Lieutenant Harding, giving his detail of what passed at the late Seedee Jaffer's house last night and this morning.

Bersidass, the deceased's metah and confidential man of business, came to me just now with the will of his late master, which I had read to me. He leaves all his property to his granddaughter and her husband, by name Meerzu Ali Beg; desires his household, &c. to be kept up with credit suitable to his memory; Seedee Saal and Seedee Roomee to counsel Mirza Ali Beg. A copy of the will I hope to be able to send you to-morrow. The papers he ordered to be shown me are his letter of protection and some certificates of good conduct given him by former Chiefs. These are to be brought to me by Merza, and I have ordered all the managers of the purgunahs and macauts which were under charge of Seedee Jaffer to be called before me. I shall duly report my proceedings.

Meer Nusseereddien sent to express his concern that I had not acted in conjunction with him, to which I replied it was his own fault, for during the illness of the deceased, I heard of his taking previous measures to act on the events of the death, but that of such he had made no communication to me.

I believe it fortunate, in every point of view, I have acted as I have done, and I hope you will consequently approve thereof.

Letter from Lieutenant *Harding* to Mr. *Seton*, referred to in the above.

Daniel Seton, Esq., Chief, &c. &c., Surat.

Sir,

On receiving your commands yesterday, at eight o'clock p. m., I proceeded with a native officer's guard to the house of the late Seedee Jaffer, and, agreeably to your directions, gave the necessary orders for carrying them into effect. Posting two sentinels at the entrance of the dwelling-house, and one at each of the gateways, giving them explicit orders not to admit any people belonging to Meer Nusseereddien or the Buckshee, and to provide against the possibility of any mistake by their not knowing them, I directed trusty old faithful servants of the deceased to be placed to point them out, should any come, with injunctions for not anything to pass the gates without leave being previously obtained.

This morning I repaired thither, at half-past six o'clock, to see that every decorum was observed when the corpse would pass out to be interred, and, in case of tumult, to give such orders as circumstances might require; and although the concourse of people was great from that period until ten o'clock, yet I have the satisfaction to state all remained quiet, respect appearing on the faces of the surrounding spectators, evincing an opinion of the merits their departed friend possessed. It may not be improper to remark, that not a soul attended either belonging to Meer Nusseereddien or the Buckshee.

I have, &c.

Surat Castle, (signed) *J. Harding*, Fort-Adjutant.
20 November 1799.

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23 Nov. 1799.

EXTRACT of a LETTER from Mr. *Duncan* to Mr. *Seton*, dated 23 November 1799.

I HAVE received your letter of the 19th of this month, and am of course very desirous that the occurrence announced in it should be productive of the good effects you hope thence to derive. I have already manifested in your exertions every degree of confidence, although during the interval since the death of the late Nabob, they have not quite answered my expectations, nor, if I may judge from your correspondence, your own. The unbecoming style in which the candidate has presumed to write to me, shows that he stands in awe neither of you or of me in the degree that is desirable; and, therefore, although I cannot now be so sanguine respecting your future success as the present circumstances appear to afford to yourself the prospect of, yet from the confidence I retain in your probity, honour, and zeal to accomplish the wishes of Government, I shall, as you desire, give full scope to your exertions, and as you call on me to be explicit, I have now again to notice that I wish to effect the following points:—

1. The increase of the subsidy as much beyond one lac per annum as you can possibly get the candidate to agree to, which should at least be half a lac more, or half a lac on the whole, and payable from the date of the consent of the late Nabob, or at least from his death.

2. His consent to our introduction of some effectual judicial system in Surat, in any of the modes already suggested to you, so as to enable us to guard against injustice being done to individuals, whether our own immediate subjects or his.

His requesting to withdraw the letter he wrote to me, and considering it as never having been written, which, whether I would comply with or not, is uncertain, but still it is desirable he should give this proof of his being sensible of the impropriety of its style and purport; you should, however, be careful not to propose this measure as my suggestion, but merely to offer the idea as your own private admonition, so that if he rejects it, neither I or Government may stand implicated in the further proof he would thereby afford of disregard to his wishes.

I need hardly add that in the event of Nusseereddien complying with this requisition, he will be sure to meet from me with every support, and his advancement will speedily take place, and he shall not have a nayb to assist him in his administration.

Respecting Seedee Jaffer, and his estate, &c., I approve of what you have done, as far as you have yet proceeded, and I shall be anxious to hear of your further progress, and as to what is in the will.

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25 July 1800.

MINUTE by the Honourable the Governor *Duncan*, dated 25 July 1800.

1. HAVING now to submit a report of my proceedings at Surat, I beg leave, in the first place, to refer the Board to the sequel in the accompaniment No. 1, of my separate correspondence on the subject of the increased subsidy, which it was then in contemplation to obtain from Nasseered-dien, the brother and next heir of the late Nabob Kaymeddowla, previous to his being seated on the musnud; as continued from the proceedings in the Political Department of the 16th of April 1799.

2. This prolonged negotiation proved, however, unsuccessful in its object, as Nusseereddien continued obstinately to persist in his declarations of inability to increase the proffered annual aid of a lac of rupees that had been made by his brother, and wrote to me on this subject a letter under date the 12th of Rebby-al-awul, or 14th of August 1799, fraught with haughty pretensions and pleas of complaint, both against Government and the court of the recorder, as will be found, on reference to it, in the body of the already quoted voucher.

3. It is remarkable, that in this letter Nasseereddien asserted his public income to be no more than 3,35,000 rupees; in which is not, of course, comprehended

prehended the additional revenue that he had about that period concerted the raising of by an enhancement of the rates of the duties on the sale of tobacco, and the farm of liquor called the Peet'ha Mehal, from which he purposed to raise the yearly lac of subsidy he was thus willing to pay to the Company.

4. Of this extraordinary letter I forwarded a copy soon after its receipt to the most noble the Governor-general; and shortly after the original of another to the immediate address of his Lordship, on the occasion of the glorious conquest of Mysore.

5. The sequel of the correspondence in the Voucher, No. 1, will next show what passed, in November last, on the occasion of the death of the late Zuffer or Jaffier Yab Khan, who, next to the Bukhshy, had for a series of years enjoyed a great degree of influence at Surat, holding not only the collection of nearly all the Mogullaye revenue from the pergunnahs, but likewise that of the town of Randeir, and of several mokauts, or taxes within the walls of the city itself.

6. This person, who is said to have outlived a century, being supposed to have left great wealth, with only a grand-daughter and her husband to inherit it, Nasseereddien appeared very desirous to interpose respecting the estate; but at the earnest entreaty of his son-in-law, Mirza Ali Beg, the Chief, Mr. Seton very properly extended the Company's protection to this family, and had also procured from Ali Beg an offer to pay 3,000 rupees per month to the Company, on condition of his being confirmed in all Zuffer Yab Khan's trusts and employments, but for the reasons set forth in the correspondence, I declined at the time to avail myself of this offer in view to the relation we then stood in towards the native government of Surat.

7. The doubts entertained on this subject were however to be speedily superseded by the arrival shortly thereafter of the instructions of the Governor-general of the 10th of March, herewith delivered in for record; whereby, after a discussion of the relative rights of the Company's Government and those of the Nabob's in Surat, it is determined that the operation of the Articles of Agreement of 1759 ceased on the demise of Mayeneddien, with whom they were made; whence, and from the duty shown to be incumbent on the British Government to provide a just, wise, and efficient administration for Surat, the draft of a new treaty having been in this view transmitted from Bengal, we were directed to deliver it to Nasseereddeen, and his acquiescence in it was (after he should have been made acquainted with the grounds of the determination) to constitute the condition of his being allowed to succeed to the office of Nabob.

8. By the proposed treaty, all the powers of the native government were to be vested in the Company, and the future Nabobs to receive a fixed stipend of a lac of rupees per annum, and one-fifth more of the surplus net revenue.

9. From this share of the revenues Nasseereddeen was to provide a suitable maintenance for the families of his predecessor, and not to be entitled to any portion of the labour of artificers or other persons in the city, or to any pecuniary rights whatever, excepting those expressly reserved to him.

10. The Supreme Government declare their willingness to leave to the Nabob, during pleasure, any portion of the Jaguir or other lands attached to the government of the city, as an equivalent for a proportion of the payments in money stipulated to be made to him, besides retaining, of course, any houses or gardens which he may occupy.

11. We were further instructed to make a suitable provision for the Nabob's relation, the Bukhshy, and for Zaffer Yab Khan (whose recent death had not then become known in Bengal), and any other officers of the late Nabob whose situations and means of subsistence might be affected by the reform of the government; which provision should, in the opinion of the Governor-general in Council, be in general made in money, without objection however to our substituting land in cases wherein it might be deemed advisable.

12. As a necessary preliminary to the assumption of the government, we were instructed to augment the military force at Surat to its present strength there; as accordingly took place previous to my leaving the Presidency, without at the same time being immediately followed up, as was further recommended,

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by the reduction on their arrival of the Nabob's troops; since, however necessary, it could most efficaciously and safely be undertaken after I should be on the spot.

13. For these purposes, and the consequent reform of the civil establishment, on the principles described in the same despatch from the Governor-genera, I proceeded in the end of April last to Surat, vested, as far as regarded that settlement and its dependencies, with all the powers of Government.

14. I arrived there on the 2d of May, and proceeded immediately on the duties which I had thus undertaken, in pursuance of the instructions from the Supreme Government, and with the full assent and concurrence of my colleagues, carrying up with me a letter from the most noble the Governor-general, under date the 29th of March, in answer to the one the Nabob had written to him, wherein his Lordship very properly animadverts (as per copy herewith de vered in) on Nusseereddeen's appearing by his said address to have assumed the title of Mutsuddy before his instalment in the nabobship by the only authority that could confirm him therein, and refers him to me for farther particulars.

15. Having just before leaving the Presidency learned from Surat that Nusseereddeen appeared much encouraged in his views of affecting a sort of independent right, by the recent acquisition of a new title of dignity from the Nizam at Hyderabad, I wrote on this subject to Captain Kirkpatrick, the British resident at that court, in the terms that are copied into the accompanying voucher, No. 4.

16. On my arrival at Surat, I found that, although the real object of my visit was of course not accurately known to any one, yet, among the various floating reports, one already comprehended its fullest extent, from which, and other circumstances, I judged it expedient to proceed with due expedition in the carrying of it into effect.

17. Meanwhile, as the season of the year rendered the detention of the Bombay frigate longer at the Bar a matter of eventual risk, I determined on despatching that vessel to the Presidency, after taking out of her, and retaining on board of the "Rodney," such part of her European crew as might be usefully employed in the castle, in the event of my being obliged to assume the government of Surat without the consent of Nusseereddien Khan, to whom, as a preliminary step, I delivered on the 6th of May the letter from the Governor-general of the 29th of March; and having on the day following a conference with Meer Nejemeddein Khan, the Bukhshee, he expressed his readiness, in co-operating with me and in advising his relation Nusseereddien, to concur in the new form of administration which, without much reserve, I intimated to him I had come under instructions from the Governor-general to establish in Surat; and I afterwards continued to improve and corroborate this disposition in the Bukshy, through the agency of Mr. Miguel de Lima é Souza, a person who has already been employed and successfully discharged other important trusts committed to him under this Presidency.

18. After endeavouring, in like manner, to conciliate Kerperam Metha, who has acted during a long series of years as the principal servant of Nusseereddeen's ancestors, and appeared now to be in full possession of his present master's confidence, I fully explained, on the 9th of May, to Nusseereddeen and the Bukhshy in person the grounds of the determination of the Supreme Government, and delivered to the former a Persian version of the prescribed articles of agreement, respecting which he proposed to deliver his answer on the 12th; and as, during the intermediate period, I had received through this minister, Kerperam, such promising intimations of his principal's being disposed to concur in the treaty, I was not a little disappointed when he and the Bukhshee waited on me to deliver the ultimate answer, to find it in the negative, Nusseereddien in particular declaring that he could not survive such an acquiescence, not only from the sense of personal degradation, but from the odium he must thence incur with all the body of Mussulmans, who, considering Surat as the door of Mecca, could not desire to see it altogether in the hands of those of another religion; and to my call at this meeting on the Bukhshy to admonish his relation to a more reasonable way of thinking, he declined interfering, by observing that the Nabob having happily attained to years of discretion, was the fittest judge of what

what best suited his own honour; and although I proceeded on this occasion the full length of the instructions of the Supreme Government, by intimating that some part of the proposed stipend might be settled in Jaguer, still neither this nor anything I could then urge appeared to work any desirable effect, and the parties took their leave after Nusseereddien had intimated that I might do with the town as I pleased, and my accordingly advising him that it would be taken possession of and his sepoys relieved from its gates the next morning; whilst, in reply to a further suggestion which, rather inconsistently with other parts of his discourse, he offered as to being secured in that case in a provision for his support, I signified that, under the turn affairs were thus unexpectedly to assume, he must place no reliance whatever on any such arrangement. 2 May 1856.

19. On the departure of Nusseereddien and the Bukhshy, Kerparam, who had not been present at this interview, expressed his great surprise at its untoward issue, assuring me that his master had brought with him, or at least put into his pocket that morning, the two Persian copies of the treaty which Kerperam himself had written fair, and delivered with a view, as he naturally concluded, to their being signed and exchanged at this interview. Unable, therefore, to account for so extraordinary a conduct in his master, he promised to endeavour to trace the motives of it and to make a farther report.

20. Still, as I could place no certain dependence on this interposition, I lost no time in communicating with Colonel Jones, the commanding officer, as to taking possession of the town next morning, as conducive to the peaceable execution of which I was desirous that the Nabob's sepoys, stationed at 12 of its principal gateways and otherwise throughout the city, to the number of about 1,000 men, should become acquainted with what the accompanying extracts from my separate diary at Surat will show I had already, by way of obviating one of his master's principal objections, intimated to Kerparam, as to the Honourable Company engaging for the fair adjustment and discharge of their large claims for pay and allowances, occasioned principally by the established mode of paying them, whereby they appear to have been generally kept in arrear in the proportion of about half of from 30 to 40 months of their pay.

21. But I was, on the same day, relieved from this disagreeable prospect by Kerparam's returning in the afternoon, and signifying Nusseereddien's unqualified acquiescence in the treaty, Kerparam explaining that on his going back and conversing with his master, and remonstrating with him a little on what seemed thus to be the injudicious inconsistency of his conduct, Nasseereddeen had observed that it was merely the odium he might incur with those of his own religious faith that had made him appear to decline the acceptance of the treaty, which after getting attested by the Bukhshy by the affixing thereon of his new seal and title of Sufda ul moolk, was executed by the Munzoor Beiz, and seal of Nusseereddien under his newly acquired title from the Nizam of Kullubed-dowler, in which state he came on the 13th in the morning unattended, as he preferred, by the Bukhshy, and in person delivered to me the deed in question; upon which I executed its counterpart to be retained by him, and both copies were further attested by Kerparam and Mr. James Augustus Grant, my secretary.

22. On this occasion it farther appeared from some particular circumstances communicated by Mr. De Souza, as recorded under the same date in my accompanying diary, that the Nabob could never have been very resolutely determined against acquiescing in the treaty, whence it seems natural to conclude that his affected negative on the 12th was by way perhaps of ascertaining by experiment the extent of my real intentions, to all which it may be proper to subjoin that the Bukshy is said to have, notwithstanding his conduct in the morning, advised Nusseereddeen to acquiescence on their return home.

23. Upon Nusseereddien's taking leave he observed that Kerparam had a few points to represent, which the latter accordingly brought forward in a written memorandum without either the seal or signature of his master, of which the following is a translation.

2 May 1856.

TRANSLATION of the Heads of Request of Meer Nusseereddeen Khan Bahader.

First. "That from the gardens and villages your friends purchased property, "and those of the Bukhshy and our dependents, the grain and fruit produced "may not be stopped at the gate."

Second. "That in the event of my creditors, and those of my grandfather "and father and brother, making applications, they may not be attended to."

Third. "That the persons required in my domestic concerns, such as tailors, "carpenters, &c., whatever is necessary I may have the power of sending into "the town for without anyone obstructing me."

Fourth. "My people will bring grain, and straw, and wood as usual from the "gateway; let that not be opposed."

Fifth. "The office of Wakeh Negary, the produce of which is 1,200 rupees, "being a royal grant not included in the town revenue,is settled upon me by "sunnud."

Sixth. "The balances of the pergunnahs on account of the present harvest, "and the balances of the mocants, &c., mehals of the town to be in my "collection up to the 20th of Zilhije, answering to the 14th of May 1800."

24. On casting my eye over this paper of requests, I noticed in general terms to Kerparam that as much should be done therein towards the Nabob's satisfaction, after full consideration of the subject, as should prove consistent with the public advantage and the security of the revenue, but that the Third Article was on the face of it altogether inadmissible, and that as the Company paid for their labourers, so must the Nabob; on which Kerperam observed, that his master desired on that head no greater privilege. I had shortly thereafter occasion to trace, that he spoke on this occasion on the knowledge that our Government was likewise in the habit of exacting the services of workmen and artificers at Surat at a rate below the ordinary price of labour, which, considering as unjust in its principle and derogatory to our honour, I have ordered to be discontinued; whence also this part of the Nabob's applications will be equally provided against.

25. Besides the contents of the above paper of requests, Kerparam slightly adverted (in pursuance, as appeared, of the incidental intimation on my part, in the preceding day's conference with his master) to the expediency of having the latter's stipend secured to him by some assignments of parts of the ceded funds in the nature of a jaguer grant; but as the Nabob had himself had no recurrence whatever to what had once before been summarily hinted on this subject, which could only have at most been made to extend to the jaguir, perhaps of one of the Moghullaye departments, it was, I observed, fitter, now that the treaty had been executed, a money payment; and Kerparam readily enough agreed that this part of the subject should no more be renewed, acquiescing in like manner in the negative I put on his farther suggestion, that the successive instalments of the stipend should be paid monthly instead of quarterly.

26. As a consequence of this conclusion of the treaty, Meer Nasseereddien Khan was seated, on the 14th of May, on the musnud with the usual observances, and on the 15th Captain Wilson, my aide-de-camp, proceeded with Kerparam and two of the officers of the Nabob's sepoys, and very quietly relieved these latter from the different gateways, of which possession was immediately taken by the peons attached to the Government House at Bombay, till, in the course of the same day, our own military guards were mounted on each of them from the regular forces.

27 All this passed without the slightest symptom of disturbance or commotion: and although some notices afterwards indirectly reached me, as recorded in my separate diary of the 18th and 19th of May, indicating a degree of inquietude, as well in the Nabob as in the Bukshy, under this new arrangement, I cannot say that I perceived, from all the inquiry I could make, much reason to apprehend the consequences of any such disposition on their parts; of which, however, every one may form their own judgments on a perusal of the relative parts of the diary, under the dates marked in the margin.

18th, 19th, and 22d and 23d of May; and 9th, 11th, 12th, and 13th, 14th and 16th of June

28. It

28. It being foreseen that a certain number of men must be entertained in the nature of militia sepoys in Bengal for the services of the magistracy and police of the city, I was ready to have provided in this corps for some of the principal native officers in the Nabob's employ; but although they at first came forward as if to make a tender of their services, either the discussions that afterwards occurred, as to clearing off their arrears, or their own views of policy, withheld all of them from again appearing, excepting only Goolzar Khan, the principal and, as I believe, the most deserving of them all, to whom I therefore entrusted the embodying of 100 men, with their proportion of jemadars, of whom he has been constituted commandant, and stationed to do duty with the magistrate. Some of the jamadars thus retained are natives of Bombay, and none of them are born in Surat; and, considering the experience and honourable principles of Goolzar himself, I have no doubt of the fidelity and utility of this corps, the pay of which has been fixed at the rate of one rupee less to each private than the regular, their clothing included; and Goolzar Khan is, from his age and respectable character, so advantageously known in Surat, that he could at any time raise upon an emergency from 1,000 to 2,000 men fit to act as sebundies for the defence of the town or otherwise, in subordinate co-operation with the troops of the line. 2 May 1856.

29. The next point that required adjustment was the settlement and liquidation of the arrears to the Nabob's sepoys, which I have already intimated my having engaged for, on the part of the Company primarily, from the necessity there appeared at one time likely to prove of our conciliating them, in case the assumption of the Government had taken place against the Nabob's consent, and partly also because whilst I doubt that he himself possessed the means to have satisfied them, however good might have been his inclinations, there seemed a sufficient degree of equity in the Honourable Company's taking this temporary charge on themselves when they were about to succeed to the exclusive government for ever of the city and its dependencies; and from what will be found stated in the diary under the dates in the margin, there is great reason to believe that in any other mode this transfer might not have so quietly and creditably taken place as it has done. After a satisfactory inquiry, and making all the usual deductions under the heads of Bursatty Kussoor, &c., the amount ascertained to be due on this head was *Rs.* 1,45,774. 0. 67., towards the liquidation of which the Nabob assigned the unexpended part of his collections on the lately enhanced rates of the arrack and tobacco leases to the amount of *Rs.* 25,796. 2. 50., leaving a residue of *Rs.* 1,19,977. 2. 17. to be discharged by the Company, and which it accordingly was, after deducting, with the consent of the parties, eight per cent. for prompt payment, by the sum of *Rs.* 1,08,302. 2. 42., as per account, particulars attested by the Nabob, and recorded in the diary, under date 5th of June. Diary, 11th and 12th May. 15th and 16th May. 22d, 23d, 24th, 25th, 26th, 27th, 28th, & 31st May; and 1st, 2d, 3d June.

30. This was not, however, the only burden that pressed on the Nabob, for his other establishments, including that of his arsenal, and even his household and family expenses, were proportionably nearly as much in arrear as the pay to his sepoys, and whilst the pending arrangements led to his making a general reduction in these heads, as well as in his charges, purely military, he declared his inability to clear off the arrears due in these departments, which he once perhaps indulged a hope, that the Company would in like manner relieve him from; but he readily acquiesced, on finding that to be deemed unreasonable, in receiving this relief to the amount of 67,670 rupees, as a loan, on his bond, without interest, as entered in the separate diary of the 10th of June, whereby he pledged his growing stipend under the treaty, as security for repayment, by the application to this purpose of the moiety thereof, from each successive instalment, whereby the whole must be liquidated within the first 12 months. 22d and 26th May.

31. I availed myself of this last accommodation to the Nabob's exigencies, to prevail on him to lodge the stores in his arsenal and the arms of his lately disbanded sepoys in the Castle, under the charge of our officers; which example was also followed by the Bukhshy, who sent thither some musquets and three or four light pieces of ordnance, that separately belonged to him. These military stores are for the present only lodged with us in deposit, which is not understood to be the case with the guns, &c., on the walls, that are considered as having been transferred to us by the treaty, without being liable to any 9th and 21st June.

2 May 1856. separate valuation or price, nor indeed are they fit to be applied to any serviceable purpose, beyond that of old iron.

32. It became next, necessary to make an adequate provision for Nejemeddien the Bukhshy, in pursuance of the instructions to that effect in the 21st paragraph of the letter from the Governor-general. From the papers recorded
9th June. on this subject, under the date in the diary, that is noticed in the margin, it appears that the Bukhshy's income hitherto had consisted in a salary that he had enjoyed in that capacity from the Nabob, in the profits of several mehals and farms entrusted to his management, and from the considerable advantages arising out of that part of the administration of justice that fell to his share, all which may be admitted to have, according to his own account thereof, brought him in half a lack of rupees per annum; and he has himself asserted that the usual rate of his annual expenses is well known to have rather exceeded that amount.

33. Besides these official advantages, the Bukhshy had for many years past been in the possession of various jaguirs, that his relations, the Nabobs of
17th June. Surat (at different times, but all above 20 years ago), alienated in his favour from various parts of the moghallaye, or assigned revenue on the neighbouring pergunnahs for the support of the nabobship, in like manner as they have (as far as depended on them), done to various other individuals. These estates or assignments, which the Bukhshy appeared to be very desirous of retaining, amount yearly, according to the valuations expressed in the perwannahs or grants, to 16,810 rupees; respecting which the present Nabob declared, on being separately consulted, that he considered them as having, from the original grants, and the length of possession, become the Bukhshy's property; on all
18th and 19th and 22d June. which grounds, and the others detailed under the dates of my separate diary referred to in the margin, I have settled that, including the said jaguirs, the Bukhshy shall receive from the Company an annual stipend of 30,000 rupees, to be continued to his children and family, after his decease, at the reduced rate of 24,000, with a clause inserted in the grant, in conformity to the instructions to that effect from the Most noble the Governor-general in Council, that in the event of its becoming expedient for Government to resume the jaguirs, the parties shall be satisfied to receive their valued produce from the treasury, in like manner with the residue of their pension.

Diary, 6th July. 34. On the 6th of this month the Nabob, the Bukhshy, and their sons, paid a joint visit to take leave; on which occasion they both declared their satisfied acquiescence in their situations; which I have myself no doubt of, as far as regards the Bukhshy; and if the Nabob should be disposed still to feel some latent disappointment or regret, it may be easily accounted for from the recent check to the lofty pretensions he had so lately entertained, as adverted to in the first part of this minute, as well as from the greater sacrifice he has made; but although he offered no suggestion whatever to me on the occasion of this parting interview, as he had, through his minister Kerparam, once intimated to have been his intention, still it is not unreasonable to suppose that he might feel gratified by having some of the mokauts or town taxes, and moghullay or pergunnah revenue, allowed in part of the stipend secured to him; but with regard to the first, I should deem it objectionable, as tending to the support of his influence within the city; and respecting the latter, I was in some measure deterred from recurring to any offer of that kind from a similar motive, the certainty not nearly of equal force, as when applied to the revenue within the walls; but besides this, it is probable, that all the pergunnah revenues may be soon required, to exchange for the Marhatta choute or otherwise, there does not seem any material objection to gratify the Nabob with some allotment of the more distant pergunnah income towards the making good of his allowance, should he eventually desire it.

35. Meanwhile, I have considerably gratified him, by a compliance with the 5th article of the Paper of Requests, which, as already intimated in the 23d paragraph, he left with me on the day the treaty was interchanged, in confirming the sunnud, he had obtained from Court, for the Wakanegary of Surat, from which a small income of between 1,000 and 2,000 rupees per annum will be derived by his eldest son Afzuliddien; and I am glad to think that, in this act, it has not been necessary to overstep the bounds of justice, in reference to the claim

claim preferred to this office by Aheededdien, the son of the late Nabob of Broach, as will sufficiently appear by the accompanying record of the inquiry made some years ago into that person's pretensions by the former Chief and Council of Surat, to which the Honourable the Court of Directors may accordingly be referred in answer to the 30th paragraph of their letter in the public department, of the 29th May 1799, on this particular subject. 2 May 1856.

36. Having thus far entered on the details of the arrangements with the late native Government, I proceed to notice the measures pursued towards the new modelling of the Civil Establishment of that city, as directed in the 25th and following paragraph of the letter from the Governor-general in Council, in strict adherence to whose instructions a judge and magistrate has, in the person of Mr. Alexander Ramsay, been appointed, with regulations for his guidance, inclusive of the institution of a criminal court, as contained in the copies of the Regulations I., II., III., IV., V., and VI., for the present year 1800, herewith delivered in, as per separate list of the accompaniments to this minute, which, if approved of by my colleagues, may, as required by the Supreme Government, be forwarded for confirmation previously to their final adoption; but in the mean time they are in force, since the institution of some immediate system would not be deferred on the assumption of the Government, in view to which the Governor-general in Council will, I have no doubt, ratify the intermediate validity of the rules thus enacted, whatever alterations or amendments they may appear to require on consideration in Bengal.

37. As not being of such urgent necessity, I have deferred drawing out the regulation for the Court of Appeal, for which No. VII. of the series of the current year is accordingly reserved till the Governor-general shall have had an opportunity of deciding whether such appeals should lie to Bombay, or be preferred, in the first instance, to a commission of appeal at Surat, who might for this purpose be constituted from the civil servants holding other offices, as in Regulation III. it is proposed to form the Court of Session or Criminal Court. This would also, no doubt, prove a conveniency to the inhabitants, upon the same principle as the Provincial Courts of Appeal in Bengal; but at Surat it might, unless by submitting to a considerable expense for a separate court, materially militate against the requisition contained in the 26th paragraph of the Governor-general's instructions that the several duties of the respective establishments be committed to distinct persons; in view to which objection it may perhaps be deemed preferable that the appeal should at once be made to Bombay, as it will accordingly be in any instances occurring before the receipt of the final decision on this point from the Governor-general.

38. The rules for the provision of the investment, as contained in Regulation VIII., are, as well as those in the preceding codes, correspondent as nearly as circumstances would admit, with the powers vested in the officers exercising similar situations in Bengal, in conformity to that part of the directions from the Government-general.

39. The materials from which the Regulation IX., for the collection of the customs of the port of Surat, has been formed, are so voluminous, that it may be necessary to apologise for the size of the accompaniment, No. 14, into which they have been copied; but as, in pursuance of the instructions from Bengal, I have made material alterations, and, indeed, altogether changed this part of the system as I found it existing at Surat, it is necessary, to enable the Board here, or the Government in Bengal, to judge how far the rules I have in this department enacted merit confirmation or require amendment, to submit the whole body of this preparatory information.

40. It will thence appear, that I had for my assistance in the present instance a proposed code of custom-house regulations, framed by the Chief and Council in the year 1798, for the several branches of the satty, phoorza, and khooshky, together with all the other local information from the several European and native officers of Government, which I could not but find extremely useful; and as the regulation itself and its preamble will, I trust, be found sufficiently explanatory of the proposed new arrangement. Government will thus be in possession of lights sufficient to enable them to form a competent opinion of its merits, when compared with the instructions respecting this paticular department from Bengal.

 41. I need,

2 May 1856.

41. I need, therefore, make the fewer remarks in this place on the Custom House Department, but it is proper here to correct a mistake I was, from an ambiguous expression in Mr. Erskine's report on the duties of Surat, led into, as will appear from the 26th paragraph of my former minute on the affairs of Surat, under date the 13th of August 1798, in supposing three yekoteras or ekotras to have been established as early as the year 1759, whereas the more accurate information in the preamble to Regulation IX. will show that there were never more than two, either at the phoorza or khooshky, one of which was separately levied for the Nabob and the other for the Company, which collected besides a duty of four per cent. at their own distinct latty custom-house, together with the same yekotra, or one per cent. additional duty, originally imposed towards reimbursing certain war charges incurred previously to the acquisition of the castle, and one per cent. convoy duty, making in all six per cent. on exports and imports, but never charged on both; whereas at the phoorza and khooshkee, or country sea and land custom-houses, Mahometans, Armenians, and Jews were charged at only 4½ per cent., inclusive of the double yekotra to the former, whilst the Hindoos paid seven; but this being found too great a difference and severity on the Hindoos, one per cent. was taken from their burthen and laid on the Mahometans, which continued in force till the general reduction of duties in 1795, of which, as far as regarded Surat the Supreme Government neither then approved, nor have since extended their sanction to, and having now been pleased to signify that the duties there might be raised to the former or other modified rates, I have accordingly fixed them at four per cent. without any deduction or superaddition for fees otherwise, together with the one per cent in the latty, which the Court of Directors have lately been pleased to impose for marine charges, and in the phoorza and khoosbkee, with the Company's former yekotra, so that whilst the real general rate will amount to five, the Mahrattas can only claim to share in the aggregate duty arising from the four per cent., which are with this view provided to be separately collected, although by the agency of one general custom master, in whose accounts the whole five per cent. customs from all the three departments will be brought to credit without recurring to the mode heretofore observed of including the Company's share of the khooshkee customs, and that derived from their yekotra on the phoorza and khooshkee, as land revenue or assignments to them in their capacity of commanders of the Moghull's fleet.

42. By a statement from the accountant at Surat, under date the 19th of June, as transcribed into the last quoted voucher, the loss of customs to the Company by the reduction of the rates that took place in 1795, will appear to have exceeded 95,000 rupees per annum, which will be nearly compensated by the present arrangement, besides which a further gain will be derived from the abolition recommended by the Supreme Government of the exemptions in favour of all goods imported under native dakhillas, so that according to Mr. Galley's estimate they cannot this ensuing year amount to less than *Rs.* 295,058. 0. 51., and I am happy to be able to add, on the opinion of Mr. Soper, the present custom master, that they may in all probability amount to one-third more, or to about four lacs on the whole, inclusive of between 30,000 and 40,000 rupees, for the separate two per cent. duty established on the Gulph trade, as sanctioned also by the 35th paragraph of the instructions from Bengal, and which, although objected against by some of the parties affected by it, on the ground contained in their representation entered in the Voucher, No. 14, I have nevertheless continued from the motives assigned in the remarks that will be found annexed to their remonstrance, whence it will appear that by the abolition of the late freight monopoly to the Chief, this branch of trade has been disburthened in a full proportion of six per cent., of which there now only remain the present two, that the parties still wish, rather unreasonably, to get also freed from.

43. As connected with this part of the subject, I bave to mention my having procured the surrender of the manphy phirmann to Muckra Abdool Tutteh, as referred to under the name of Mulna Fukhereddeen in the 29th paragraph of my minute of the 13th of August 1798, in consideration of a pension settled on his family of 1,000 rupees per annum, whereas he appears, by a statement entered in Voucher No. 14, to have derived an annual advantage exceeding three

three times that amount, under the exemption that had been thus allowed him. 2 May 1856.

44. Proceeding next to the Revenue Department, I have transcribed into the accompaniments, No. 15, the several accounts I have been able to procure in explanation, as well of the nature as of the amount of the Nabob's revenue ceded to, as under the late treaty; but as, under the first of these heads, a general idea is already given in my minute of the 13th of August 1798, I shall, after begging leave to refer to it, request in the next place the Board's attention to the two general statements prepared by Mr. Galley, under date the 30th of June, as inserted in the last quoted voucher, whence it will appear that the pergunnah revenues assigned for the support of the office of the Mutsuddee, or Nabobship, without the town, although amounting in the gross to *Rs.* 2,10,658. 0. 50., have for many years past been competent to yield an annual revenue to the Nabobs of no more than *Rs.* 1,24,627. 1. 0., the difference of 86,000 rupees having been alienated by various grants of the Mutsuddies or Nabobs themselves to sundry persons by perwannahs, which, although containing (as far as I have had an opportunity of inspecting) a clause subjecting them generally to resumption, if not confirmed by the Court of Delhi, which few of them have, I believe, yet been, still, as nothing of this kind has, in the lapse of many years, probably taken place, the occupants have been long in the habit of expending these grants for the permanent hereditary subsistence of themselves and their families, insomuch that, although I have appointed a special committee to make a general inquiry and report on the alienations in question, exclusive of those of the late Buckshee, which I have already adverted to the mode of my disposal of, I apprehend that much addition to the ceded revenue cannot be looked for from this branch of it; but this is a point which will admit of further consideration when the report above alluded to comes before us. The same committee, composed of Messrs. Galley and Soper, are likewise directed to investigate and report on a variety of claims to certain small daily and other charitable allowances, all which I authorised to be, in the meantime, continued as the Nabob should be found to have paid them.

45. I have already had occasion to observe, that the collection of the greater part of the still available residue of this pergunnah revenue had remained in charge of the late Zufur Yab Khan till his death in November last; but he did not pay the whole amount thereof, as realised by him, to the Nawab, as will sufficiently appear from his present representative, Merza Ali Beg's own statement, as recorded in the sequel of the last quoted voucher, which will also account for the latter's already reported offer to the chief, of making a separate payment to the Company for being continued in the office of collector.

46. The next branch of this ceded revenue (which is locally known under the firm Moghullaye, in contradistinction from that levied by the Mahrattas) consisted in a variety of taxes on articles imported for consumption within the town, and upon various of its interior manufactures, devised, no doubt, in the variety of their subdivisions with a view to raise a revenue adequate to the annual expense, and so as to admit, at the same time, of the least possible participation of the chouteas, which may account for some of the articles, such, for instance, as the Gallah Mundaviee being only liable to a mokant duty, instead of the more obvious one that might have been levied on it on passing through the custom-house, but had this last mode been observed, the Mahrattas would have been entitled to one-third of the produce. There are also various articles liable not only to mokant but to custom-house duties to the annual value of rupees 3,83,863. 0. 28., as per enumeration thereof in Mr. Galley's very elaborate catalogue of them, in one of his accompanying valuable statements, under date the 5th of July, respecting which, and his several other accounts elucidatory of this complicated system of Surat revenue, all which are recorded in the same accompaniment; it may, therefore, become matter of deliberation, after one year's experience of the receipt of the revenue according to the present system, to consider how far it may be advisable, partially or generally, to abolish this double taxation on the same articles, the present objections against which consist in the risk of too far diminishing an already sufficiently circumscribed revenue, and from the precautions necessary to be observed in any modification of the present rates, so as to preclude the chouteas from any grounds of claim to participate

2 May 1856.

further than they now do, as they certainly would, were, for instance, the taxes on grain and ghee imported into the town collected in the form of a custom-house instead of a mokant duty. But to revert to the particular accounts of the mokants; they will be found, by the statements transcribed into the voucher last referred to, and particularly by that of the 30th of June, which is shown by Mr. Galley's most accurate computation thereof, to have yielded to the Nabob, after deducting the Mahratta's and the Company's shares, a net revenue for the last year of about *Rs.* 2,61,220. 3. 31., which added to the moghullage, at the already stated amount of *Rs.* 1,24,627. 1. 0., make an aggregate of *Rs.* 3,85,847. 3. 31., composing the whole amount we have acquired under the treaty, except the customs and the revenue arising under the head of Adawlut and Mint. The first of these three separate heads do not appear to have produced more to the Nabob, on an estimate of his receipts for the last three years, as per Mr. Galley's statement of the 19th of June, copied into the Voucher No. 14, than *Rs.* 25,571. 3. 35 ½, whilst the Nabob and Mint may be taken for the same period at *Rs.* 11,444. 1. 81, leaving the aggregate of the available ceded funds at *Rs.* 4,42,864. 0. 67 ½.; although even from this amount above 50,000 rupees per annum were intercepted in their respective managements by the Buckshee and Zuffur Yab Khan, so that only about three lacks and 74,000 rupees resulted net to the Nabobs for the support of their stations, inclusive of military and all other personal establishments and charges; the difference between which and the still less amount adverted to in the 3d paragraph, may be found in the additions made to the tobacco and arrack farms, and in the other particulars set forth in the figured statement prepared with this view by Kurparam, the Nabob's minister, and transcribed into and forming part of the Voucher No. 15.

47. Having thus far entered into the subject of our newly-acquired resources at Surat, I have next to mention, that in conformity to the spirit of the instructions from the Governor-general, the establishment of Chief and Council was formally abolished by a letter addressed to them under date the 2d instant, as it may be considered to have virtually been from the 15th of May, when Mr. Galley and Mr. Ramsay entered respectively on the exercise of the distinct functions of collectors and judge, although the former did not receive any written or detailed instructions before the 7th of July, under which date those issued for his guidance will be found recorded in the Voucher No. 15, establishing his office on the same system as those of the collectors in Bengal, and directing him to advertise and let at auction all the ceded mokants of which the leases have expired, or which had hitherto remained unleased in the hands of the native government. Mr. Galley's salary has been fixed at 2,000 rupees per month, with 150 rupees for office rent, by which the Company will be no losers, as the equivalent fees this gentleman formerly received as collector of the castle and tunkha revenues are now to be brought to the public account. These instructions to Mr. Galley advert also to the additional charge of the treasury now vested in the collector, inclusive of the negotiation and drawing of all bills of exchange; and they recommend to him and to the custom master duly to discriminate, in the first instances, between the articles subject to mokant from those chargeable with custom-house duties, respecting which they are authorised separately or jointly to report to Government on any circumstances in either that may be found from experience to bear hard in any particular instance, or to operate oppressively on the community in general, whereby Government will have an opportunity of granting such relief in those respects as may appear necessary.

48. On the abolition of the chiefship, Mr. Seton was appointed Lieutenant-governor of the castle. In this capacity he is to exercise all duties of a political or other nature which shall not immediately belong to the establishments for the administration of justice or the collection of the revenue, continuing, however, as heretofore, President of the Commercial Board; besides which he is to act as President of the Quarterly Criminal Court.

49. For the other heads of Mr. Seton's instructions I beg leave to refer to the copy thereof, entered in the voucher No. 15, whence it will appear that in pursuance of the directions of the Governor-general, the officer commanding the troops at Surat has been placed under the orders of the Lieutenant-governor, and in all instances where the services of the military may be required in aid

of

of the civil power, application is to be made for such aid through the chief civil servant in his capacity of Lieutenant-governor.

50 The Lieutenant-governor's personal salary has been fixed at *Rs.* 3,000 per month, besides which he has been authorized to apply towards his establishment of servants the fees accruing on all sea passes, which are in future to be signed by him, and the receipt from which source will not probably fall short of *Rs.* 4,000 or 5,000 per annum.

51. Mr. Seton has also been authorized to draw *Rs.* 100 per month for his principal native servant, and *Rs.* 100 more for an English writer; in addition to which, the keeper of the records of the late chief and council, which are now under the charge of Mr. Seton, has been allowed to draw *Rs.* 40 per month, but no other expense is to be incurred on this account.

52. It was my first intention to have, in view to its relative importance on the new arrangement, and the duties left to be performed by it, fixed the Lieutenant-governor's salary at only *Rs.* 30,000 per annum; but from a reasonable desire to have due regard to Mr. Seton's situation in the chiefship, I made the addition of about *Rs.* 10,000 above specified; yet, as this gentleman continues still in the opinion that a larger sum should have been fixed on him personally as long as he may hold the office, if not extended to his suceessors, I have only to add, that if a determination to this effect shall be ultimately passed in his favour, it cannot prove otherwise than agreeable to me, having no doubt of Mr. Seton's zealous discharge of his public duty, and feeling therefore proportionate regret that he should, however unavoidably, have suffered any diminution of authority or income by the present change.

53. To Mr. Church I have assigned the office of postmaster, deputy military and marine paymaster, and inspector of civil pensioners, and have also placed him in charge of the ceded department of the Mint, which last I have hitherto been unable to devise adequate regulations for, because at whatever rate we may fix the value of the Surat rupee, it will ever be the interest of the adjoining Mint of Broach to coin below that standard; whence it follows that theirs is in fact the most current rupee in Surat, as the latter is here, to the great inconvenience of that settlement.

54. In pursuance of the instructions contained in the 21st paragraph of the Governor-General in Council's letter of the 10th of March, I have settled on the Nabob's minister Kerparam Mehta and his heirs, a pension of *Rs.* 300 per month, and a like allowance to Goolzaur Khan, the late commandant of the Nabob's troops, of *Rs.* 40 per month, neither of which sums amount in fact to any full compensation to those officers for the prejudice they incur by the Nabob's loss of authority; but they are nevertheless satisfied, and I may add firmly attached to the Company's interests; the son of the former, and the latter himself being transferred into our service, though with salaries that, even including the pensions now granted, fall still greatly short of their former income.

55. Finding that the dustoor, or high priest of the parsees (of which caste there are 12 or 14,000 inhabitants of Surat), possessed very scanty and inadequate means of subsistence, I consented, as a gratifying mark of the attention of Government to that body of its new subjects, to grant him a pension of *Rs.* 50 per month; and it appearing very advisable to conciliate to the recent change of government, and to attach to the British interest the Edvoosee Synd, who is known to possess a very powerful influence over the mussulmans, I have granted to his son a pension of *Rs.* 500 per annum, the writings for all which are included in the 15th accompaniment, under date the 7th instant.

56. Besides this, I have, upon the grounds set forth in the 17th voucher, settled a pension of *Rs.* 130 per month on the family of Pharis Khan, once the late Naib of Surat, in consideration of their renouncing all claim to the Jageer they possessed in the pergunnah of Versail, and to the other offices and privileges enjoyed or claimed by them within the town of Surat. The members of the Board will recollect that this family had lately been applying for restoration to the Jagheer in question, their pretensions to which were of such a nature (as will fully appear by the extracts above referred to), that it seemed very expe-

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dient, in view both to the credit and immediate interest of our honourable employers, to whom the Jageer in question has now devolved as part of the ceded Moghullay revenue, that this easy compromise should be effected.

57. The accompaniment, No. 18, contains a general statement, prepared by Mr. Galley, as collector, of the probable amount of the Company's resources, derivable from Surat, under the new establishment, after deducting the military, marine, and all other charges, except the Nabob's one-fifth under the treaty, the amount of which, as a contingency, could not be precisely ascertained; notwithstanding which, I am sorry to find that the disbursements as brought forward in this account (of which the military constitute, however, considerably more than half) exceed the receipt by the sum of *Rs.* 1,35,339. 3. 63., the calculated receipts being *Rs.* 8,09,348. 1. 1., and the disbursements *Rs.* 9,44,688. 0. 68. whereof *Rs.* 5,21,657. 0. 40. (being more than double the amount of last year) are for the Military, and *Rs.* 38,332. 0. 34. for the Marine; the next heaviest disbursements being *Rs.* 68,908 for the Adawlut and Police Establishment, and *Rs.* 1,27,075. 3. for fixed stipends and pensions to the Nabob, Buckshee and others, as chargeable on the ceded resources, the amount of which in land revenue and customs may, from the said general account, combined with the separate estimate of the Customs entered in Voucher, No. 14, be stated as follows:

Amount of net calculated receipts from the Pergunnahs and Mokants as land revenue		385,847 3 31	
From Phoorza Customs, after deducting the choutias and the tunka, or Company's separate share thereof	*Rs.* 30,705 2 71½		
Khooshkee - ditto - ditto	17,595 3 25		
		4,831 1 96½	
Total of estimated ceded funds under the treaty, expense of Mokant and Adawlut receipts			434,149 1 27½
Besides which, the Company have incidentally improved their resources at Surat by the present arrangement, to the following amount:			
Estimated addition to the Latty collections, exclusive of the one per cent. Marine Duty, as per Mr. Galley's account of the 9th of July 1800		38,811 2 82	
Estimated addition to the Company's share of the Phoorza, inclusive of their yeketra on one per cent. on the three shares of themselves, the late Native Government and the Mahrattas	49,853 1 58½		
Deduct their calculated annual receipts from this fund for the last four years, on a medium, according to Mr. Galley's estimate of the 19th of June	16,425 1 9⅓		
		33,428 – 49	
Estimated addition to the Company's share of the Khooshkee, inclusive of their yakotra, or one per cent. on the three shares, as per Mr. Galley's account of the 9th July	30,972 2 69		
Deduct their calculated annual receipts from this fund for the last four years, on a medium according to Mr. Galley's statement of the 9th of June	9,146 2 26		
		21,646 – 33	
Total estimated improvement of the Company's Tunka resources from the new arrangement			93,885 3 64
Add for Mint and Adawlut receipts, according to Mr. Galley's estimate in his account of 9th July			11,444 1 81
Total of estimated resources from the new arrangements at Surat	Carried forward		539,479 2 72½

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				Rs.	a.	p.
Brought forward - - -				539,479	2	72½
Deduct from which, the estimated amount of charge incident thereto, as per Mr. Galley's account of 19th of July, viz. :—						
	Rs.	a.	p.			
Stipends and pensions of the Nawaub and other natives -	127,075	–	3			
Ceded revenue charges - -	24,062	3	–			
Custom-house ditto - - -	19,332	–	–			
Adawlut and police ditto - -	68,908	3	20			
Mint - - - - -	4,800	–	–			
	244,179	1	20			
To this sum is to be added the Nawaub's one-fifth under the treaty, *i.e.*, after deducting his own fixed stipend and the charges of collection, which last may be here taken at about *Rs.* 50,000 on account of the Revenue, Customs and Mint, leaving 295,000 and odd rupees, or say three lacs of net ceded revenue applicable to the operation of the Nabob's one-fifth, which creates an additional charge of - - -	60,000	–				
To be deducted - - - *Rs.*				304,179	1	20
Result - - - *Rs.*				235,300	1	52½
Amount of net improvements to the Company's revenue, by the late arrangements, according to the preceding estimates - - - -				—		
Deduct further that part thereof arising from the incidental improvement connected therewith to the Company's own Latty Customs, and their separate or Tunkha share in the Phoorza and Khooshkre branches thereof - - - - - - - - - - -				93,885	3	64
Ultimate estimated result of what the Company may be said to have gained by the treaty, consisting of the surplus available resources of the Nawaub - - - - - - - - - -				141,414	1	88½

58. In this rough calculate, I have made no allowance for the salary to the collector of *Rs.* 25,800, because it will be compensated in the manner set forth in the 47th paragraph, nor for the five per cent. allowed to the custom master on account of his realizements, because, as already adverted to in the 42d paragraph, they will probably considerably exceed their estimate in the preceding calculations; nor does the Lieutenant-governor's salary constitute any part of these deductions, since, supposing it to fall properly under the head of charges of collection, which it does not, it is compensated by the separate fund, arising from the two per cent. on the Gulf trade, not included in the above stated estimates of the customs.

59. From all that has been said, it will appear that the Nawaub's funds do not, in the state I found them, equal Mr. Ramsay's estimate, which the Supreme Government appear, by the 16th paragraph of their commands, to have had particularly in view in fixing the amount of the provision to be made for the former; whereas they seem in truth not to have, in their most favourable state of late years, exceeded the gross amount of five lacks, which the 126th paragraph of my Minute of the 13th of August 1798, indicates my own opinion, on a consideration of Mr. Ramsay's statement, and the other documents then before us, to be nearly about the probable aggregate of his receipts. I do not suppose it to have been the intention of the Supreme Government, that any proportionate reduction should have been made in the Nabob's stipend, on the discovery of the ascertained error in that statement, in which they appear to have thus most confided, because there is no direction to that effect, nor were there any means of adequately ascertaining the grounds of the material differences between Mr. Ramsay's, Roychund Jetty's, the former chief's, and the late Nabob's own statement of these funds, as all previously transmitted to

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Bengal, until we came into possession of the administration, besides my having reason to believe that the sooner this last event took place, the less difficulty it might be attended with; and if the Nabob's allowances should thence prove, on the whole, large, in view to the general funds, I trust this will appear compensated, as far as possible, by the economy observed in the distribution of the other stipends of which the sums were not fixed by the Supreme Government; upon which principle I have avoided altogether making any provision for the family of Zuffur Yab Khan, although his name be expressly included in the letter from Bengal, among those who were to be provided for, since it will appear, from the correspondence in the first accompaniment, that he has not left his family in need of the Government assistance.

60. In No. 19 of the accompaniment, I annex the copy of a letter I wrote to the Resident at Poonah, under date the 8th instant, explanatory of the claims of the Chouteas on Surat, and conveying my answer to the Peishwa's requisitions, in consequence of the notification made to him by Colonel Palmer, of the Company's having succeeded to the administration of Surat, as conveyed to me by the letter from the Secretary to Government of the 18th of June last.

61. This accompaniment, No. 20, contains copies of my correspondence with a committee of officers appointed to inspect and report on the state of the outer wall of the city of Surat, with my first orders thereon to the late chief and council, and my ultimate instructions on the same subject to the Lieutenant-governor, which, together with the plan of the wall as herewith delivered in the accompaniment No. 20, may be sent to the Military Board, for their opinion on the repairs that it may be advisable to make to these fortifications, in consequence of the city they protect having devolved to the sole and exclusive dominion of the East India Company.

62. The Supreme Government having, in their instructions of the 10th of March, deemed it advisable to endeavour to effect the exchange with the Peishwa and Gunowar of the Moghullage lands in the vicinity of Surat, for their claim to choute, and the purposed acquisition to the Company of the Pergunnah of Chourassy, as adverted to in the 105th paragraph of my Minute of the 13th of August 1798, directed Colonel Palmer to commence the negotiation with the Peishwa, as we were authorised to do with Govind Row, the Gunowar Raja, through any other channel.

63. I accordingly availed myself of Govind Row's having sent Ahkmul Khan and Bury Khan with a complimentary letter to me at Surat, to dispatch back with them Aka Mahomed, with instructions to endeavour to obtain the objects recommended by the Supreme Government, either on the terms of friendly concession, or for an equivalent, as Govind Row should seem disposed; the result of which has been an apparently very ready acquiescence on the part of this Raja to make over to the Company the pergunnah of Chourassy, and to renounce his claim to the choute of Surat, without other consideration than our general friendship, as per particulars narrated at length in my separate diary, marked No. 4; but in Govind Row deemed it necessary to advise the Peishwa of his intentions in this respect. The conclusion of this negotiation is, therefore, unavoidably protracted until that chieftain shall have obtained an answer from the government at Poona, which by letters received from himself and his minister this day, as recorded in the voucher No. 22, he appears to be still waiting for.

64. I cannot close this report of my proceedings at Surat without a particular acknowledgment of the ready and zealous assistance I experienced throughout the whole course of my proceedings from Mr. Miguel-de-Lima-de-Souza, in conformity to the like praiseworthy dispositions I have not failed to find him evince in such other instances as I have had occasion for the use of his services, as particularly exemplified on our records in the case of his mission to Goa, which attracted (as I may here add to this gentleman's honour), the approbation of the present Governor-general.

65. To Alli Mahomed, the agent of Mulluk Mejaier, of Persia, I am also much indebted for his general assistance, and particularly for the able execution of his mission to Brodera, which was attended, as far as depended on his exertions, with the completest success. As he has no doubt incurred some expense in this journey,

journey, and in his accompanying me to and from Surat, I beg leave to recommend his being at least reimbursed his expenses on these occasions. 2 May 1856.

Bombay, 25 July 1800. (signed) *J. Duncan.*

EXTRACT of a Letter from Mr. *Seton* to Mr. *Duncan*, dated the 18th August 1799.

IN consequence of your desire I have exerted myself to the utmost to obtain from Meer Nusseereddeen a more favourable subsidy, but I am concerned to advise, that he desired I would not press him more, for the lac per annum was to the utmost he could afford, so as to be regular in the payment of. I enclose a Persian copy of the rocca he sent to me, with a translate. I have also the honour to enclose his letter to you, which has been read to me, and its contents are to the same effect, and nearly a detail of what he spoke to me at the several conferences I have held with him. 18 August 1799.

The only mocauts which it appears to me he could increase with propriety to the subjects, are the tobacco and liquor farms; the times are very bad, and trade of the place quite low at present, therefore the revenues, I am confident, are greatly diminished.

I have endeavoured to ascertain an account of the expenditure; I believe the same force and number of sepoys are the like that have hitherto been kept up, and rather upon an improved regular system, from being under the direction of the buxy, who I consider a man of good abilities. The families of the two last nabobs are very numerous. Nusseereddeen too has a large family; has two sons, youths of 18 and 19 years, and he tells me that it is incumbent on him to get them married, and of course they must have establishments. I could not perceive, after consulting him, the least opening to recommend any reduction of the Durbar expenses. I really believe great economy and frugality are observed in the general expenditure of the government.

A considerable share of the revenues of Surat are absorbed by the Buxy and Seedee Jaffir. Nusseereddeen, in his present undecided situation, has, on this occasion, tried ineffectually to obtain aid from them, but they hold his authority as negative; they are now both men of advanced age, with infirm health, so that in the course of fate they probably cannot live long. This clog on the revenue removed, and trade revived with the peace, I think Government may, with every degree of reasonable propriety, have the expectance of a more eligible subsidy, but from the present situation of matters in Surat, I confess I cannot discover any resource from which Meer Nusseereddeen can derive more than the unconditional donation he offers.

Meer Nusseereddeen has acquainted me he is ready to pay his kists for the lac, should it be your pleasure to accept his donation. As I know the expectations of Government, I have only to assure you I have left no argument unused which you have from time to time furnished me with, besides what has occurred to me from local knowledge and personal influence, but now regret the want of better success.

The other important point is the introduction of the Adawlut, and as it is your intention, on this introduction, so to modify it as to prove as agreeable as possible to him, I trust Nusseereddeen's compliance with the wishes of Government in this respect cannot be withheld.

To the QUEEN'S Most Excellent Majesty in Council.

THE humble Petition of Meer Jafur Alee Khan Bhadoor, of Surat, in the Presidency of Bombay, but now residing at No. 110, Gloucester-place, Portman-square, in London, and of Zeeaoon Nissa Larlee Begum and Ruheemoon Nissa Begum, infants, under the age of 13 years, the grandchildren of Meer Ufzulodean Khan, the late Nawab of Surat, and of Ameeroonissa Begum, the widow of the said late Nawab, by the said Meer Jafur Alee Khan, their father and next friend.

Showeth as follows:

1. Meer Ufzooloddeen Khan Kumrood Dowleh Ushmat Jung Bahadoor, from the year 1821 until his decease on the 8th of August 1842, enjoyed the dignity

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and immunities of Nawab of Surat, with the sanction of the British Government in India, under and by virtue of the provisions of certain Articles of Agreement entered into on the 13th day of May 1800, between the East India Company and Nusseeroddeen Khan, the father of the said Ufzooloddeen Khan, whereby, in consequence of the surrendering up to the East India Company the civil and military government of Surat, it was provided that he should continue exempt from the jurisdiction of the courts of justice, and should be at liberty to dispense justice over his relations or servants.

The late Nawab, Meer Ulzooloddeen Khan, having only two daughters, Bukhtyarool Nissa Begum and Nujeebool Nissa Begum, and being without the prospect of male issue, about the year 1830 contemplated marrying his daughters in such wise that his future sons in law, with their wives, might become his heirs, and accordingly, when two of the sons of the King of Delhi were at Surat, the Nawab took them into his palace, with the intention of marrying them to his daughters, and making them his successors; but on the Nawab dispatching his chief minister to the Provisional Government of Bombay, to obtain his sanction to the arrangement, the Government advised him to seek an alliance with another family.

A negotiation was then set on foot for the marriage of the Nawab's daughters with the younger brothers of the late Nawab of Baroda, with the intention of their becoming his successors, but as the Nawab stipulated for them residing with him at Surat, their elder brother, the Nawab of Baroda, disapproved of the arrangement, and in consequence the negotiation was broken off.

Proposals were then made by Meer Sur-fazez Ali, the father of your petitioner, Meer Jafur Alee, for the alliance of your petitioner and his brother, the late Meer Ukbar Alee, with the daughters of the Nawab, and a third negotiation was thus commenced which ended in a compact between your petitioner's father and his Excellency, that your petitioner and his brother should, from the day of the marriage, reside with the Nawab in the palace at Surat, and never leave it except with his express consent, and that he should constitute them his heirs and successors.

This agreement having been made, the Nawab caused a memorandum of its terms to be drawn up, which he forwarded to your petitioner's father at Baroda, requiring him, and your petitioner and his brother, to affix their seals to it. The following is the Nawab's letter to your petitioner's father on the occasion:

"In these auspicious days I had the pleasure to receive your favour, dated the "10th of the month of Rujub 1239 Hijree, forwarded with Beychurdass, the "soucar. The subject of my accepting your children into my adoption, "exuded from your friendly pen, has delighted me most with greatest pleasure; "the adoption of Meer Ukbur Alee and Meer Jafur Alee has been noticed to "my mind. May the High Almighty render the above children successful. In "this matter, some points are required indispensably to be arranged, I have, "therefore, given a memorandum of the arrangement in charge of the above "soucar, who is a free agent on your part; you are accordingly to draw an "agreement on your part, as well as that of your two sons, bearing the seals "and signatures of all the three gentlemen, and forward it to me forthwith, so "that other worldly ceremonies may take place."

The memorandum referred to in the above letter, and delivered your petitioner's father, was as follows:

"That Meer Surfaraz Ali Saheb, the son of Syrid Moontaz Ali, the son of "Synd Zoolfkar Alli, does hereby declare, in writing, that his Highness the "Nawab of Surat, a descendant of the illustrious Saint Synd Alee Hamdance, "has no male issue, but two daughters, Mts. Nujeebool Nissa Begum and "Bukhtyarool Nissa Begum, who, it has been settled, are to be betrothed to "my two sons, Synd Ukbur Alee and Synd Jafur Alee, and the mutual agree-"ment having taken place, I here give, in writing, that the dowry of each of "the ladies is to be one lac of rupees. The other engagement is this, that the "mutual expenses in the marriage ceremonies are to be equivalent on both "sides, suitable to the character of both parties. Also, my two sons are to "remain as sons in law of the house at Surat, in the palace with his Highness, "and keep the house in a prosperous state. The two sons have no authority "to take the two ladies out of the city of Surat. This they will never do. "Should a case of urgency require the two sons to take the two ladies, or their "children, to Baroda, they shall not do it without the permission of his High-

"ness,

" ness, for a fixed period of time. In case his Highness proceeds to another " climate, the real mothers of the ladies are to act upon the above engagement, " and his Highness will make a will in the name of the two sons, regarding the " succession and inheritance of the property and maintenance of the survivors, " &c. The two sons are to act upon the will, and they will always carry the " usage and ceremonies of the house of Hamdanee into execution, and they " are never to marry a rival to the ladies above cited.

" Myself, and my two sons, will never deviate from the above engagement. " we, Meer Ukbur Ali and Meer Jafur Ali do hereby declare that the above " engagement is confirmed by us, and we shall not deviate from it."

Your petitioner and his brother, and their father, having duly sealed a copy of the paper, enclosed it to the Nawab, in a letter from them, which is as follows:

" In this most happy time, your letter, which you wrote with extreme kind- " ness, reached me, and filled my heart with joy, with regard to what you have " mentioned that you have accepted my sons as your own sons, and requesting " me also to accept your daughters as my own daughters. These tidings have " given me the greatest pleasure imaginable. I pray to God Almighty that the " children of both sides may enjoy the happiness of this world. You have " given a draft of an arrangement to Beychurdass Savkar, which we three are " to sign and seal; according to your bidding I send you the memorandum " duly sealed and signed by their names. The above-named Sawkar will deliver " it to you, and whatever the above-named respected person shall say, you may " rely upon as correct, and send me a quick answer; I hope you will always " keep me informed of your state of health."

After this, and before leaving Baroda for the marriages, your petitioner's father, feeling that in binding down his sons to reside always with the Nawab at Surat, he ought to have some corresponding assurance that his children would inherit the Nawab's wealth, addressed a letter on the subject to Mirza Abdoolla Beg, the Minister of his Excellency, and which elicited from him the following reply:

" It having been brought to my notice, through your letter to the address of " Mirza Abdoola Beg (my precious friend), that you have a sort of anxiety in " your mind, as the season of the grand and august festival of the marriages " has approached, I write you in clear terms, that you should have no anxiety of " any kind in your mind and should not imagine these weddings to be the " usual ones, for I adopt your children to be my sons and appoint them my " successors. The ceremonies of the nuptials are to be mutually performed. " After the consummation of the marriages, your sons shall be mine, and they " shall live in my house; allowing your certainty to this writing of mine, and " taking it for a deed of assurance for the future, make preparations for coming " to this place along with your sons; consider this to be a strict injunction, " and be peaceful of mind in all respects. Further, my sincere friend, Mirza " Abdoolla Beg's letter to you (on this subject) will explicitly afford you satis- " faction."

After the above correspondence the marriages took place, and were celebrated with great pomp and splendour. The amount laid out on the occasion was scarcely less than five lacs of rupees. A military guard was lent to the Nawab; salutes were fired from the castle, and the agent and all the European society of the station attended. The Nawab invited the Governor, Lord Clare, the Members of Council and the other distinguished persons from Bombay to be present at the ceremony, which he desired should pass off with all possible eclât.

On the return of your petitioner's father, Meer Surfaraz Ali, to Baroda, the Nawab, at his request, and for his satisfaction, communicated what had occurred to James Williams, Esq., the British Resident of Baroda, in the following letter:—

" In this time, by the grace of God, the marriage of my two daughters has " been completed with all propriety. The illustrious sons, Synd Ukbur Ali " Khan and Synd Jafur Ali Khan, are incomparable in dignity and ability. " I am exceedingly pleased with them, and have appointed them my successors; " I shall request the same of the Honourable British Government, and, for the " same reason, I beg of you to keep this matter in your reflection. Meer Sahib " will mention it to you in detail, and, after a few days, my confidential friend,

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" Mirza Abdoolla Beg, will be sent to wait upon you, agreeably to the request " of the Meer Sahib. Written on the 22d of Zilhej 1249, Hirjee or 2d May " 1834."

The Resident acknowledged the letter in the following reply:—

" Your kind letter, favoured by Meer Surfaraz Ali Sahib, alluding to the " succession of Synd Ukbur Ali Khan and Synd Jafur Ali Khan (may they " live long) to yourself, having been written, its perusal gave me a great " pleasure. In this matter I write to you as a friend, that I will use all the " endeavours in my power with the Honourable Government in the object " above cited. You should think of no omission on my part as a sincere friend. " The altercation now impending between the Sirkar of the Guicowar and the " Meer Saheb, on account of a misrepresentation made by some person, will " soon be cleared off, if it please the Almighty God. In the meantime, leave " has been granted to Synd Ukbur Ali, as requested by you, but permit him to " come to Baroda for a few days, when the Meer Saheb will require his " presence."

Your petitioner and his brother, Meer Ukbur Ali, on their marriage left their father's family, and from that time resided with the Nawab at Surat as his sons, according to the engagement.

In the year 1839, the wife of Meer Ukbur Ali Khan having died, and the issue of the marriage having predeceased her, he, with the Nawab's permission (though very much against his Excellency's wishes), rejoined his father at Baroda, and continued ever afterwards to remain in his father's family.

My wife, Bukhytyarool Nissa Begum, having given birth to a son, who was named Meer Ameeroddin Khan, the Nawab, on the 4th February 1841, and when the child was about two years' old, took an opportunity, with the consent of your petitioner and his wife, of assembling all his household, and in their presence of placing the child on the musnud, and presenting the Nawab's jewels to him. The officers and servants then advanced, and presented their nuzarands or offerings.

This circumstance was communicated by his Excellency to your petitioner's father in a letter, dated 12th Zilhej 1256, Hijree.

" May it be known to you that in this august time, on the 11th of Zilhej " 1256, I seated my son, Meer Ameeroddin Khan (may he live long), on my " musnud. All the officers of my Sirkar gave their presents, all the materials " belonging to the ancient dignity of the Nawabee of my ancestors, such as " drums and mahee maratib and the wearing jewels, &c. of the state, the whole " and perfect I have given to the son above-mentioned, and seated him in my " place, as desired by his parents. I congratulate you as my brother (on this " occasion). What more shall I write, except my love to you; may the days " of your happiness be for ever. Accept my compliments from your sister, and " best respects from Malikazanees Begum and Ameeroddin Khan and Zeeanoon " Nissa Begum. Dated 12th Zilhej 1256."

Your petitioner's son, Meeroddin Khan, having shortly afterwards died, and the Nawab from that time forth regarded your petitioner, in virtue of his alliance with the Nawab's only surviving child, as the sole successor to his title and dignity; and the fact was well known throughout the household and throughout the city, nor indeed has this fact at any time been disputed.

It was manifest, from several documents executed by the Nawab, in which allusion was made to those who were to succeed him, and from the testimony of most respectable persons, conversant with the views of the Nawab, and the relation which subsisted between him and your petitioner, that the Nawab always treated your petitioner and his wife with the greatest affection, and that he never intended to swerve from his engagement with your petitioner's father, and that he must have died with the fullest conviction that his private estate at least would pass tranquilly into the hands of his daughter and your petitioner, as his heirs, though he was no doubt well aware that your petitioner's succession to the office and dignity of Nawab would depend upon the pleasure of the British Government.

If, however, any doubt could be entertained of the intentions of the Nawab, his daughter and your petitioner, with their children, alone constituted the family of the Nawab at the time of his decease, and by the law of nature, and by the universal principles of justice, ought to be recognised by the common consent of mankind, they must be accounted his heirs and the successors to his

his property; nor has it been suggested throughout the prolonged investigations which have since taken place, that the Nawab at any time regarded any other persons as his heirs, or intended any disposition of his property at variance with the natural right of his own descendants.

The Nawab having left considerable movable and immovable property, it accordingly passed into the hands of your petitioner and his wife on the Nawab's decease, as of course living with the Nawab up to the hour of his death, known to all his household and dependants as their future master, the right of your petitioner and his wife was at once recognised; all looked to your petitioner for orders, which they readily obeyed. Your petitioner superintended the funeral of the deceased, took charge of every thing, and remained in possession of the estate undisturbed for some months, granting receipts in his own name for rent, and expending it on the family, with much more besides from his private resources, and managing all the affairs as in the deceased's lifetime.

But shortly after the Nawab's decease the Government thought fit to declare that the Nawabship was at an end; and without questioning the authority of the Government to refuse to recognise your petitioner or his wife as the successor to the political dignity or privileges of Nawab, your petitioner submits that it is beyond dispute that the Government had no authority or right to determine who should be the owner of the Nawab's private estate. For with regard to that, he was always accounted by the Government, and was by right a free agent to dispose of it as he pleased without the intervention or sanction of the Government.

In the ordinary course of events, in accordance with the local laws and regulations of government, if any one had conceived himself to possess a better right than your petitioner and his wife to the Nawab's property, he would have resorted to the local Court of Surat, under whose jurisdiction your petitioners came on the cessation of the Nawabship, by the express provisions of the Regulations. The local court would then have had to undertake the duty of deciding your petitioner and his wife were not entitled to retain possession of the estate which had passed into their hands, with the consent of the deceased Nawab, and to which they were the only heirs by the universal law of nations, confirmed by the written agreement, the letters, the language and the whole conduct of the Nawab for the last 10 years of his life, which your petitioner is advised and believes the local court of justice would have been bound to recognise in the determination of your petitioner's rights.

But the Government of Bombay deemed it expedient to sequester the property of the Nawab; and however uncalled for and unwarranted by law this act may have been, your petitioner does not now complain of it as a grievance, but he humbly submits that the rights and interests of himself and his wife, in relation to the estate of the Nawab, could not be affected or prejudiced by it, but that they, nevertheless, still remained entitled to be regarded in every principle of natural justice and universal equity and right as the owners of the Nawab's estate.

Your petitioners, however, in accordance with the feeling predominant amongst natives of rank in India, being unwilling to resort to the ordinary courts of justice to assert his rights against the government, or to compel the administrator of the Nawab's estate, as he might have done, and the government of Bombay having no power or authority to interfere with it, and the Government of India at length determined to pass a legislative enactment to place the family of the Nawab and his estate under the jurisdiction of the Governor in Council, in accordance with the usage which has long prevailed in India; for your petitioner shows that on the first requisition of Surat the Governor in Council of Bombay was, by the local regulations, santioned by the authority of Parliament, constituted the Supreme Court of Appeal in Bombay from all decisions in civil and criminal causes pronounced by the local courts of justice; and that subsequently, when the jurisdiction was transferred to the Suddur Adawlut, composed of one Member of Council and several senior civil servants, the Governor in Council still remained, by an express regulation, the sole court of appeal, in India, in all causes relating to persons of rank in the , where alone they reside in the Presidency of Bombay; justice in the first instance being administered to them by an agent appointed for that purpose by the Governor in Council; but from the decision of the Governor in Council an

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appeal could at all times be preferred, as of right, to your Majesty in Council, which, under the provisions of the statute in that behalf made and provided, is now referred, by your Majesty's general Order in Council, to the Judicial Committee of your Majesty's Privy Council.

On the 26th August 1848, the following Act was accordingly passed by the Governor-general of India, Council Act, No. XVIII. of 1848, "An Act for the "Administration of the Estate of the late Nawab of Surat, and to continue "Privileges to his Family: Whereas it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzoolooden Khan "Kumrood Dowleh Ushimat Jung Bakadoor: Whereas the exemption from "the jurisdiction of the Civil and Criminal Courts enjoyed by the said Nawab "and his relations and servants, by virtue of the treaty concluded between the "East India Company and the said late Nawab, on the 13th May 1800, "recognised and confirmed by Clause 2, Section 21, Regulation II., 1827, and "Clause 2, Section 1, Regulation XI., 1827, of the Bombay Code, ceased at "the death of the late Nawab; and it is deemed expedient that some of the "said persons should continue to the privileges; it is enacted as follows:—

"I. No writ or process shall be sued forth or prosecuted against the persons, "goods or property of the several persons named in the Schedule annexed to "this Act, being the widows and family of the said late Nawab, or any of them, "unless with the consent of the Governor of Bombay in Council first obtained, "such consent to be signified by the signature of one of the Secretaries to "Government; and any writ or process sued forth or prosecuted against the "persons, goods or property of the said several persons, or any of them, without "such consent as aforesaid, shall be utterly null and void.

"II. The Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nawab of Surat, "in regard to the settlement and payment of the debts and claims standing "against the estate of the said late Nawab at the time of his death, and to "make distribution of the remaining property among his family; and no act of "the said Governor of Bombay in Council in respect to the administration to, "and distribution of, such property from the date of the death of the said late "Nawab, shall be liable to be questioned in any court of law or equity.

III. The limitation of time for bringing suits in the civil courts provided in Regulation V., 1827, of the Bombay Code, shall be held in respect to all persons within the provisions of Clause 2, Section XXI., of the said Regulation II., 1827, to begin as to all causes of action arising before the passing of this Act, from the day of the passing of this Act, subject to this provision, that no suit by or against any of the said persons shall be entertained in any civil court on account of such cause of action, which arose at a time preceding the death of the said late Nabab by more than the number of years or months severally limited with reference to such cause of action by the said Regulation V., 1827, as the period within which the suit must be filed after such cause of action arose or came to the knowledge of the plaintiff, as the case may be.

IV. Deeds registered under the provisions of any Act passed by the Governor-general in Council in India shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the day of the passing of this Act by any persons within the provisions of the said Clause 2, Section XXI., Regulation II., 1827, provided that such last-mentioned deeds relate to property conveyed to the owner before the day of the passing of this Act.

SCHEDULE.

1. Padsha Begum	Widow	Of the late Nawab.
2. Amerool Nisa Begum	Widow	
3. Meer Jaffi Alli	Son-in-law	
4. Zeeason Nissa Begum	Granddaughter	
5. Rukkeemon Nisa Begum	Granddaughter	
6. Mooeenoodeen Khan	Buckshee	
7. Mier Kumrooden Vullud Shumsoddeen.		

Under the authority of this Act, the Governor of Bombay, in Council, appointed William Edward Frere, Esq., who was the agent of the Government at Surat, to investigate whatever claims might be preferred to the succession to the

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the estate of the late Nawab, and to make an award, and re ort to the Governor and Council thereon.

Your petitioner's wife, Buktyarool Nissa Begum, having in the meantime died, leaving Zeanoon Nissa Begum and Rukeemoon Nissa Begum, above-named in the Schedule to the Act, her only issue, who, together with your petitioner, were, by the law and custom of India, her only heirs.

Your petitioner appeared before the said agent, and preferred a claim on behalf of his infant daughters, on the grounds hereinbefore stated, to the whole of the estate of which the late Nawab had died possessed, subject to the payment of his debts, your petitioner relinquishing in their favour any claims on his own behalf.

Ameerool Nissa Begum, the widow of the late Nawab, and the mother of your petitioner's late wife, and also mentioned in the Schedule to the said Act, appeared before the said agent by her attorney, and admitted the right of your petitioner's said daughters to the whole of the said estate, but claimed, in the event of the agent deciding against them, to participate in any distribution of the estate which the agent might order to be made amongst the kindred of the late Nawab.

Padsha Begum, also mentioned in the Schedule to the Act, appeared before the agent by her attorney, and claimed to be entitled, as his widow, to a share of the estate, according to the law of the Mahomedan sect of Sheiks, to which, it was alleged, the late Nawab belonged.

Meer Moseenooden Khan and Meer Kumrooden Khan, also mentioned in the Schedule to the said Act, appeared before the said agent, and claimed to be entitled, as the nearest male kindred of the late Nawab, to a share in the estate according to the law of the said sect, they alleging themselves to be the male descendants of Syed Nathan, the brother of the late Nawab's great grandfather, Meer Moseenooden Khan, the first Nawab of Surat of that family.

One Meer Surfoodeen also appeared before the agent, and claimed, as the heir of Mudina Begum, the sister of the late Nawab's late grandfather, Haffizoddeen, to be entitled to a share of the estate, according to the Mahomedan law.

And one Abdool Rehman, with several others, claimed as the heirs of Tuckroon Nissa Begum, the deceased wife of the said late Nawab Haffizoddeen, certain property, which it was alleged by them had been possessed by him on her death, and had been left by him on his own decease, and had subsequently descended to the late Nawab.

To the whole of these claims your petitioner objected, not on the grounds hereinbefore stated, but because they proceeded on the erroneous assumption that the administration of the estate of the Nawab must necessarily be governed by the religious law of inheritance of the Mahomedans of the Sheik sect, usually applied to the distribution of the estates of private persons of that sect by the native courts of justice; and your petitioner insisted that if the positive engagements of the Nawab were not to be upheld, or the natural right of your petitioner's children, as the only issue of the Nawab, were not to be recognized, yet that it was manifest that the Nawabs, though Mahomedans, never adopted the Mahomedan code of inheritance in their family; and that it therefore never attached itself to their property, but on the contrary, that they maintained and acted upon a principle at variance with the Mahomedan law, namely, that the estates of persons belonging to either one branch of the family should be inherited exclusively by that branch to which the deceased might belong, and should not be divided with the collateral kindred of the other branch.

Of this, conclusive proof was afforded by several transactions in the lifetime of the late Nawab, stamped with the approbation and acknowledgment of the British Government. On one occasion the widow of the late Nawab's father having obtained possession of a considerable part of the property of which he died possessed, the late Nawab appealed to the Government to obtain its restoration, when the government, presided over by the Honourable Mountstuart Elphinstone, who was peculiarly qualified to form a just opinion on the subject, replied, "It was in a very happy time that I had the pleasure of "receiving your letter, and have understood its contents; whatever is pleasing to "your Highness is the source of happiness to us. Your Highness is the sole "controller and authority in all your affairs and transactions, and in the inhe-"ritance of your family, without consulting others; and there seems no reason

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" for the Government to interfere, but you must consider that the Government " always are anxious to meet your Highness's wishes."

About the same time the late Nawab's mother complained to Mr. Romer, the agent of the Governor at Surat, that the late Nawab refused to give her the share of her husband's property, to which she would be entitled by Mahomedan law; but Mr. Homer replied, I received your letter in good time. In that you mention something about the displeasure between yourself and his Excellency the Nawab. It should be very clearly and certainly understood by you, that upon this subject, in the same manner as the former order of the Honourable the Governor has been conveyed, directing that the Honourable the Governor disapproves of the thought of interference regarding such disputes as it may be connected with the family of his Excellency the Nawab, it is impossible to do so. The same order is confirmed and held in force: what more shall I write?

Finally, in order to avoid contention in the family, the late Nawab proposed to concede to his mother a portion of his father's estate, equal to the share of a widow under the Mahomedan law, but upon the express condition that it should not be construed into a recognition of any right under the Mahomedan law; he required a solemn instrument of remuneration to be drawn up, and signed by both of his own family, and by the family of the Bukhsee to which the widow belonged.

Accordingly a deed was prepared, and Meer Sudroodin, the Bukhsee, and Meer Shunsodeen, the father of the present claimant, Meer Kumrooden, affixed their seals to it, containing the following clause:

As above detailed, the eighth part that has been written out to me by my beloved son the Nawab, is merely in consequence of his regard to my satisfaction and pleasure, because such division never hath taken place in this family during the five generations past, and henceforth, if any of the relations claims a share in an estate of a deceased or living person, his claim is to be null and unrecognizable. After my brother Meer Sudroodin Khan Safaur Jung Bahadoor (the Bukhsee), had consented to these terms, my beloved son agreed to give the eighth part of the division to me, also my brother Meer Sudroodin Khan Sufdur Jung Bahadoor has not, and shall not, have any claim upon my beloved son for the share of an estate of a dead or living person.

But at this very moment, in consequence of intermarriages between the several branches of the Nawab's family, if the Mahomedan law of inheritance had been recognized, the Bukhsee and Meer Shumsoodin would have been entitled to shares of personal property in the possession of the Nawab, which he had derived from deceased members of his family, and at the same time the Nawab's mother would have been entitled to a very large amount for the shares of personal property in the possession of the Bukhsee, which he had derived from deceased members of his own branch of the family.

It thus appeared, that in the lifetime of the Nawab, both branches of the family had repudiated the Mahomedan law as the rule of succession, and inasmuch as the estate of the Nawab had never recurred any acquisition from the property of the several members of the Buckshee's family, which had been returned by him to a very large amount for his exclusive benefit, it was contrary to the most obvious principles of equity to allow the Buckshee, after the Nawab's decease, to set up the Mahomedan law and claim under it a portion of the Nawab's estate.

Whilst, in recent times, the facts which were within the knowledge of the witness produced before the Court clearly established the positive renunciation of the Mahomedan law, it was not shown that on any one occasion, from the time the family of the Nawab first acquired their authority in Surat, the Mahomedan law had then been adopted as their rule of succession; no ground, therefore, existed by which the claims adverse to your petitioner was supported, rather than that the law of the sect of Soonees, by which the collateral kindred of the Nawab would have been excluded, and this estate would have vested in your petitioner's wife alone.

27. Your petitioner further objected to the claim of Badshee Begum, that she had been divorced by the late Nawab, whereby she was disentitled, even by the Mahomedan law, to any share in the estate, and it was clearly proved, by the testimony of the Nawab's household, that several years before his decease he divorced Padsha Begum from him, and removed her from and in accordance with the usage and practice in India of high rank. He placed her in

in a separate establishment, with an allowance of 30 rupees a month, and of dry food from the palace, and 150 rupees a year for clothing until 1833, when the last item was stopped. That from the time of the divorce until the Nawab's decease, he had no intercourse with her, and that she was not admitted to see him in his last moments, and so, generally, was understood that her relations with the Nawab had ceased. But when the ladies of rank at Court paid visits of ceremony at the palace on the Nawab's decease to condole with his widow and family, the same mark of respect was not paid to Padsha Begum, nor was she put forward as the Nawab's widow until she united with the Bukshee in opposition to your petitioner. Your petitioner further objected to the claims of Meer Moeenoodun Khan and Kinnorodun Khan, that they never constituted a part of the Nawab's family in his lifetime, and that they were not the legitimate male kindred of the late Nawab.

Your petitioner objected to the claim of Meer Turfoodeen that even by the Mahomedan law he could not be entitled to any share of the estate, and the claim of Ablevol Ruhemove, that they were not interested in the division of the residue of the estate, but could only be creditors thereon if their claims were admitted, which, however, for several sufficient reasons your petitioner submitted ought to be wholly disallowed.

28. All the several claimants were British subjects, residing in and near Surat, within the territories subject to the Government of the East India Company, and, with the exception of your petitioner, his daughters and mother-in-law, and Padsha Begum, and had, previously to the passing of the said Act, been subject in all matters to the ordinary jurisdiction of the courts of justice.

29. The Agent of the Government investigated such several claims in a judicial manner, and, after having such evidence as was adduced before him, and the arguments on behalf of your petitioner and the other claimants, respectively, on the 8th of August 1852, made his award or decree thereon, which, after stating the claims preferred before him, and adverting to some of the arguments urged in support of them, proceeded as follows:—

Without any modern precedent for the case of an independent sovereign divested of all territorial possession, living with uncontrolled authority over his relations and dependents in a foreign country, we can compare it only with the case of King Edward, who, when returning through France from the Holy Land, was allowed, after solemn discussion before the Parliament of Paris, to have jurisdiction, even in France, over his servant, who while in Paris embezzled some silver, and was apprehended by the French authorities, and from which it might be inferred that he would have been allowed jurisdiction over the property as well as lives of his subjects in his train, and that his own property, had he died in France, would have been disposed of according to his own and not the French law; or the Nawab might perhaps be held to resemble an ambassador, who is exempted absolutely from all allegiance and all responsibility to the laws of the country to which he is deputed, and in which he resides, being considered, even while residing within a foreign state, as living in his own country, retaining his original domicile and his attendants, personal effects and domestic servants, being under his protection and equally exempt from foreign jurisdiction through the immunity allowed to ambassadors and their suites, is sustained by the interests and courtesy of nations, and rendered requisite for negotiations and friendly intercourse, and therefore rests on a different basis, from the immunity granted to a foreign potentate, either travelling through or residing in a foreign country. Let us then, without too nicely inquiring into the causes, follow the principles of these cases, and though the Nawab was resident within the British territories, let us apply to the distribution of his property that law to which he was subject. We know of no rules or code of laws laid down by him for the government of his household and relations, and we must therefore conclude that his own will was the only law that he obeyed, and that in disposing then of his property, we must strive to ascertain what that will was. The Agent then proceeded to notice the grounds of your petitioner's claim in detail, and, adverting to some doubts cast on the genuineness of the documents which passed on the marriage of your petitioner, observed: —It is, however, a matter of very little moment whether these documents be genuine or not; the discovery of them at this late day in the handwriting of

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people now alive, who did not mention them when the former inquiry was going on, seems strange; but, even admitting them to be genuine, they prove nothing; for though the Nawab Ufzooloddeen may, in 1833, have held out hopes to Surfraz Alee, and the latter may have entered into a treaty of marriage with the Nawab, on the understanding that he was to make a will, leaving the succession and inheritance to his son-in-law, still, as the Nawab was guided only by his own will and pleasure, and there is no written will produced on the subject, we must conclude that the Nawab altered his intentions, or made some other arrangements, and that these arrangements or alterations whatever they were, agreed to or submitted to by his son-in-law, the Nawab's confirmation of his intentions is proved by a letter from him to Surfraz Alee (19), dated 29th March 1834, which he writes, and after adverting to several documents which the agent was pleased to deem immaterial, he remarked:— "The letter dated the 5th February 1841, hereinbefore set forth, is worthy "of more consideration; it is written by the Nawab to Meer Surfraz Alee, "informing him that he had placed Meer Jafur Alee's son, Meer Meeroodeen, "on the musnud, and the whole of my establishment have made him presents "on the occasion, and, according to the custom of my ancestors, I have given "him the drums, &c.; and, at the desire of his parents, I have made him "my successor." The authenticity of this letter, as well as the other documents, is contested by the opposite parties; but there is no reason why they should not have submitted it, so opposed as it is, as Meer Kumrooden points out (paragraph 49), to the terms under which Meer Jafur Alee would contend the marriages were contracted. In 1839, Nufeebool Nissa Begum (Ukbur Alee's wife) died and left no children, so that Bukhtyarool Nissa Begum, Meer Jafur Alee's wife, was at this time the Nawab's only child; the Nawab had promised (19) to make his sons-in-law his successors; one (the elder) could no longer be so, and the younger had every right to expect that the Nawab would fulfil his intentions towards him; but instead of that, this letter would show that the Nawab had no intention of making his son-in-law, but his grandson, his successor, and that it was his daughter and son-in-law's wish that he should do so. This, allowing it to be genuine, is the only proof we have of anything actually done by the Nawab in furtherance of his intention to appoint a successor, and that there was a grave deliberate act requires confirmation, as we do not find that the proceeding was ever communicated to the agent, or any public notice whatever taken of it, for Atmaran (26) states that none of the gentry of the city were invited or attended the meeting. The child, however, died before his grandfather, and of what after that were the Nawab's intentions we have no proof; we have the evidence of witnesses that he looked upon Meer Jafur Alee as his son, but we also have evidence that the Nawab was entirely in Mahomed Alee Beg and Tutch Mahomed's power, and would not, when on his deathbed, allow Meer Jafur Alee to sit near him. I was in attendance at the Nawab's palace when he was ill, and went and saw him two or three times; I and Jafur Alee were together. The Nawab would not allow any one but Mizza Mahomed Alee Beg and Tutch Mahomed, and other Kedmutgars to sit near him; he would not allow Jafur Alee, so that when we find the Nawab had no will, and instead of appointing his son-in-law, as he promised his successor, he at his own son-in-law's request appointed his grandson, and on that grandson's death neither received his promise to his son-in-law nor made the will he promised. We cannot conclude that the Nawab meant that son-in-law for whom a will appeared to be requisite to constitute him heir to be his heir without one, but the more rational constitution to arrive at appears to be, that disappointing in heirs male both of his and his daughters, and conscious that his dignity as Nawab must become extinct at his death, he made no will or expression of his desire how his property would descend, but left it to follow that course which the law or ruling authority might prescribe, and this appears the more probable and reasonable, since so long as the Nawabship and pension remained, there was some one for the whole family to look up to, but when these failed, there would be no head to provide for the other members of the family, and each must thenceforth depend upon his own exertions. The position, therefore, assumed by Meer Jafur Alee that the Nawab retained to the day of his death his resolution to make his son-in-law his heir is not proved, nor is it shown what the Nawab's intentions were with regard to his property. Having thus found that his own

will

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will and pleasure, the only law to which the Nawab was subject, have not prescribed any rules for his inheritance, we must see whether any particular custom of inheritance was pre-ordained in the family, whether, as urged by Jafur Alee, the custom of the family was neither to divide nor to receive inheritance with relations. This being a negative position, the onus of proof, of course, rested on those who asserted the affirmative. The agent having then stated at length his view of the evidence adduced in support of it, found that the custom of the family had not been established. He further as follows: Having thus seen there were no municipal laws to which the Nawabs were subject, nor any peculiar custom existing in their family, it remains to be seen to what law the distribution of the property amongst the Nawab's family is to be subjected. The general rule is, that personal property should be distributed according to the law of the domicile, while to the inheritance of real property the *lex loci* is alone applicable. The law of the domicile (of the Nawab's palace), we have seen does not exist, except in the Nawab's pleasure alone, and what his pleasure was in this case he has not recorded, even in the most informal manner. The real property then, we may safely say, would follow the law of the land, for though we might, had any laws of the Nawab's palace been forthcoming, have raised the question whether the *lex loci* was to be strictly applied to the real property, still no such laws existing, there is no ground for raising any question at all. That property, then, must be divided according to the Mahomedan law, and as we can find no other law or rule applicable to the personal property, there does not appear any reason why that also should not follow the same law, the religious law of the deceased. It was sought, on the examination of Moonshee Lootfolla Khan (96), to prove that the late Nawab could not be held to be a Mussulman: "To all appearance the Nawab was not a Mussul-"man. I never saw him at prayers, I never saw a beard on his face. I have "heard him abusive on religious subjects, but I do not know what he might "have been in his heart. The Nawab, when attending prayers at the Eed, "never bowed himself to the ground, and used to talk while they were at "prayers. I have heard that the Nawab was called a Synd."—*Lootfolla Khan's Evidence.* His conduct has been shown to have been in many points and on some occasions contrary to the strict rules of that faith, and it is therefore contended that the Mahomedan law is not applicable to the case of inheritance. The Nawab was a Synd, and Meer Jafur Alee married into his family; as such he was buried as a Mussulman; and in subjecting men to the laws of their faith, it is not necessary to inquire whether they are observers of the strictest rules of it, or merely nominal conformers with it, the rule is the same for the one. If any other mode of disposing of the property, except by Mahomedan law, was pointed out, the fact of the Nawab being but a heterodox Mahomedan might have some weight, but in the absence of all semblances of other laws or customs to guide the distribution of the property, and with the law of the land in which the real property is situated indicating the Mahomedan law as the rule to which that portion of the inheritance should be subjected, we are constrained to adopt that as the law which should govern the personal property also.

The agent further decided, that Abdool Rehman and the other persons claiming through Tukroon Nissa Begum, the wife of Haffizoodeen, the late Nawab's grandfather, and Meer Suffodeen, claiming through Meedina Begum, the sister of the said Haffizoodeen, were not entitled to any share in the estate of the late Nawab.

The agent having found, on review of the evidence which had been taken before him, that the last Nawab was duly married to his two widows Padshah Begum and Amerool Nissa Begum, that your Petitioner's late wife Bukhtyarool Nissa Begum, was the illegitimate daughter of the late Nawab, that the claimants, Meer Mooeenoodden Khan and Meer Kunrooden Khan, were his lawful collateral male relatives, concluded his award or decree, as follows: "The "widow's child and great grandfather's brothers' great grandsons, are alone "considered heirs, and entitled to inherit according to the Mahomedan law, "and they are entitled to share in the following proportions: the daughter is "entitled to one-half of the property, the widows are entitled to one-eighth "between them, and the residue will go to the other two heirs in equal propor-"tions. It is, therefore, decreed that the property be divided into 16 shares, "and of that eight shares are awarded to Meer Jafur Ali Khan, on behalf of "his daughters; one share is awarded to Padshah Begum, one share to Ame-"rool

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" rool Nissa Begum, and three shares each to Meer Mooeenodeen Khan and " Meer Rumrooden Khan."

Your petitioners being much aggrieved by the tenor of this award, your petitioner Meer Jafir Alee, addressed to Mr. Malet as Chief Secretary to the Government at Bombay, a letter dated the 22d of March 1853, deprecating to the said award or decision on various grounds, to which letter your petitioners at the proper time will crave leave to refer, and the said letter concluded as follows: Whichever of the three rules above suggested be adopted, my claim can alone be supported. If the marriage contract be proved, it is clear it would give me a title superior to a mere exercise of will, and one resulting from a legal obligation. If the evidence of the Nawab's intentions be examined, there can be no reasonable doubt that his daughters and his sons-in-law and their issue, were the sole objects of his bounty. But if that evidence be defective, and the Government, assuming the position of the Nawab, ask their consciences the question, whether if the Nawab could now be appealed to, to name the object on whom he would have wished his wealth to devolve, the answer would not be in favour of his own offspring, and not a distant member of the family to whom he owned nothing of affection or of gratitude, and from whom when alive, he was estranged, the Government are surely bound to appropriate the late Nawab's property in that manner which would have been most acceptable to his own feelings, and would merit his approval and sanction if he were alive.

In answer to the letter last-mentioned, Mr. Malet wrote to your petitioner, Meer Jafur Alee, the following letter, dated the 21st of July 1853,—" Sir, in " answer to your two letters, dated the 22d March 1853, I am directed by the " Right honourable the Governor in Council, to refer you to the acting agent " for the Right honourable the Governor at Surat, who will communicate to " you the decision of Government in the matter thereon represented."

On the 27th July 1853, H. Hebbert, Esq., the acting agent for the Right honourable the Governor at Surat, wrote and sent to your petitioner, Meer Jafur Alee, the following letter: " Sir,—I am directed by the Right honourable the " Governor in Council, to inform you that on full consideration of the appeals " preferred by yourself on behalf of your two daughters and your mother-in-law, " Amer-ool Nissa Begum, and the other claimants on the property of His " Excellency the late Nawab of Surat, against the decision passed by Mr. Frere, " the late agent, Government has, under Section 2 of Act XVIII. of 1848, " adjudged the succession to the said property in the following shares: The " Nawab's two grand-daughters, Rukeemool Nissa Begum, 4-16ths: Zea-ool " Nissa Begum, 4-16ths. The Nawab's two widows, Badshah Begum, 1-16th; " Amer-ool Nissa Begum, 1-16th. The great grandfather of the late Nawab's " great grandfather's brother in the male line, Meer Moyenoodeen Bukhshee, " 3-16ths; Meer Rumrooden Wullud, 3-16ths. 2d. With reference to the above, " I request you will be good enough to attend either in person or by vakeel at " my office on Monday next the 1st proximo, at 12 o'clock A.M. precisely, as I " should wish to consult you regarding the best mode of distributing the " property in question amongst those to whom it has been awarded."

Your petitioners are advised and humbly insist that a valid and binding contract was entered into on the occasion of the marriage of your petitioner, Meer Jafur Alee, by which contract the succession to the estate of the late Nawab ought to be determined; that there was a valid and subsisting law or custom of the family of the late Nawab of Surat, which had been repeatedly to be acted upon, whereby the other claimants to the estate and effects of the late Nawab were excluded from taking any share thereof, or participating in the succession thereto; and that independently of these special considerations, your petitioner's wife, as the sole issue of the Nawab at the time of his decease, was alone entitled upon principles of natural justice and right to the whole of his estate, to the exclusion of the Nawab's remote kindred, who did not in his life time constitute any part of his family, and were never recognised by him as entitled to participate in his estate; and your petitioners are further advised and humbly insist that Padsha Begum, who claimed as one of the widows of the late Nawab, who had been divorced by him in his lifetime, and formed no part of his family at the time of his decease, and was not entitled to any share in his estate; and that Meer Mooenooden Khan, and Meer Kumrooden Khan, were not ever by the Mahomedan law legitimate collateral relations of the late Nawab, entitled to share in his estate; and that the adjudication of the Right honourable

honourable the Governor of Bombay in Council, was promulgated in the letter of Mr. Hebbert of 27th July 1853, is erroneous and ought to be reversed. 2 May 1856.

Your petitioner is further advised, and humbly submits that your Majesty's Privy Council is the only tribunal to which your petitioner can appeal against the judgment of the Governor in Council of Bombay, and your petitioner shows that from all decisions of a similar character passed by the Government in Council in regard to the property of persons of rank in Western India, an appeal is referred as of course to the Judicial Committee of your Majesty's Privy Council; but in consequence of the Legislative Council having, as your petitioners believe, entirely omitted to take into their consideration, in framing the Act hereinbefore stated, the right which your petitioners possessed of appealing to your Majesty in Council, your petitioners are by the construction which has been put upon that Act by the Judicial Committee of your Majesty's Privy Council, unable to submit his appeal to their Lordships, without the express order of your Majesty in Council.

Your petitioners therefore humbly pray, that your Majesty will be most graciously pleased to take the case of your petitioners into your Royal consideration, and will be pleased to refer the consideration of this petition to the Judicial Committee of your Majesty's Most honourable Privy Council; and that your petitioners may be heard before the said Judicial Committee by their counsel, and that your petitioners may have leave to appeal against the said adjudication of the Right honourable the Governor of Bombay in Council, founded upon the award or decision of Mr. Frere, and communicated by the letter of Mr. Hebbert of the 27th of July 1853, and that for that purpose all necessary directions may be given to the Clerk of your Majesty's Most honourable Privy Council, of all notes or records of any evidence taken by, and documents produced to or laid before Mr. Frere relating to the matters in question; or that your Majesty will be most graciously pleased to grant to your petitioners such further or other relief in the premises as to your Majesty shall seem meet.

And your petitioners will ever pray, &c.

(signed) *Jafur Alee.*

MINUTE by the Honourable the Governor, subscribed to by the Honourable Mr. *Anderson*, dated 15th August 1842.

1. ALTHOUGH no official report has yet reached me, I am informed that his Excellency the Nawab of Surat died of cholera on the 8th instant. 15 August 1842.

2. It seems to me of importance that, in consequence of this event, Mr. Elliot, if he has not left Guzerat, should be directed by express to immediately return to Surat, and resume the office of Agent to the Governor at that station.

3. The public interest seems to require this arrangement, and Mr. Elliot should submit to Government, as early as possible, a report on whether by the Nawab's death any change arises in the ex sting relations between Government and the Nawab's family; whether his Excellency has left any heirs, and if so, in what degree; and generally what arrangements are necessary consequent on the demise of the late Nawab.

15 August. (signed) *G. Arthur.*
G. W. Anderson.

From *L. R. Reid*, Esq., Chief Secretary to Government to *G. L. Elliot*, Esq., Agent for the Honourable the Governor at Surat Doornus, dated 16th August 1842.

Sir,

I AM directed to transmit to you copy of a letter from Mr. Richardson, Acting Agent for the Honourable the Governor at Surat, dated the 8th instant, No. 134, reporting the death on that day of his Excellency the Nawab of Surat. 16 August 1842.

2 May 1856.

2. In consequence of this event, Government deems it of importance that you should immediately return to Surat, and resume charge of the office of agent for the Honourable the Governor at that station.

3. As it appears that the Nawab has left no male descendant, the title and all the inclusive jurisdiction of his Excellency will become extinct.

4. By the treaty with the Nawab, the British Government is bound to continue the allowance enjoyed by his Excellency to his heir, the Governor in Council therefore requests that you will be pleased to report as early as possible whether his Excellency has left any heirs, and if so, who they are, and in what degree.

5. I am further desired to request that you will at the same time report whether by the Nawab's death any change arises in the existing relations between the British Government and his Excellency's family, and generally what arrangements are necessary consequent on his Excellency's demise.

I have, &c.
(signed) *L. R. Reid,*
Chief Secretary to Government.

Bombay Castle,
16 August 1842.

MEMORANDUM by the Political Secretary, dated 10 September 1842.

10 Sept. 1842.

1. IN submitting the accompanying Report from Mr. Elliot, Agent to the Honourable the Governor, at Surat, dated the 28th ultimo, consequent on the demise of the late Nawab, I also submit a compilation, marked (A.), containing the instructions issued to the Bombay Government by the Government of India, under date the 10th March 1800, forwarding the draft of a treaty to be concluded with the then Nawab of Surat, the father of the deceased Nawab.

2. This draft treaty contained the terms on which alone the father of the late Nawab was to be recognised by the British Government; these terms were acquiesced in, and Nusseer-ood-den was duly installed as Nawab the 14th May 1800, a proclamation being issued on the following day, declaring the Company's exclusive jurisdiction to be in force from that date. Copy of this proclamation will be found in the compilation marked (A.) These arrangements were carried into effect by Governor Duncan, in person, who left Surat, on his return to Bombay, the 10th July 1800.

3. Nawaub Nussur-ood-deen died on the 23d September 1821, and on the 29th November following his son, Meer Ufzoob-ood-deen-Khan (the late Nawab) was installed as his successor.

4. In the Report herewith circulated, Mr. Elliot states it to be his opinion, that the title of Nawab, and all the privileges appertaining thereto, have become abrogated from failure of male heirs.

5. With reference to the stipend enjoyed by the late Nawaub, *Rs.* 1,50,000 per annum, Mr. Elliot states, that according to the Mahomedan law, the British Government is bound to recognise the following persons as heirs to the late Nawab, and to divide the stipend among them in the following proportions:

1st.	Widow, 1-16th, is - - - - - -	*Rs.* 9,375
2d.	Ditto 1-16th, is - - - - - -	9,375
3d.	Daughter, ½ is - - - - - -	75,000
4th.	The Bukshee of Surat, a distant relation, 3-16ths, is	28,125
5th.	Meer Kumroo-deen-Khan, a distant relation, 3-16ths, is - - - - - - -	28,125
		Rs. 1,50,000

A genealogical table of the family is annexed to Mr. Elliot's Report.

6. The honourable Board has therefore now to determine,—1st, whether as reported by Mr. Elliot, the title and privileges of Nawaub of Surat have now become extinct; and 2d, Whether under the treaty of 1800, the stipend enjoyed by the late Nawab, is to be continued to the persons named by Mr.

Mr. Elliot, and in the proportions specified, and if so, whether for life or in perpetuity. 2 May 1856.

7. With these proceedings I circulate two letters lately received from the Nawaub's daughter Bukhtiar-oo-Nessar Begum, and one from Meer Moonoodee Khan, on the subject of their claims and pretensions consequent on the late Nawaub's death.

10 September 1842. (signed) *J. P. Willoughby,*
Secretary to Government.

MINUTE by the Honourable the Governor, concurred in by the Honourable Mr. *Anderson,* dated 18th October 1842.

IT appears to me of very great importance, that before anything is settled regarding the succession of the Nawabship of Surat, every information which can bear on the subject should be collected and stated in our proceedings in such a complete shape, that we may, as far as possible, preclude all chance of any complaint being hereafter made of defect of information regarding either the facts or law of the case. 18 October 1842.

For this purpose we should first, I think, have a complete history of our connexion with the Nawab of Surat, from its origin to the death of the late Nawab, showing the precise relation on which the Nawabs and the Company have stood to each other at various times, but more especially since the arrangements directed by the Governor-general in 1800. All particulars necessary for such a history will, I should think, be found in the documents forwarded by the Political Secretary; but they will require to be collected from this very voluminous mass of papers, and to be properly arranged.

The Mahomedan law of the case, as far as it can affect the present question, should also be ascertained from unimpeachable authority, and clearly set forth.

The questions, whether of law, of fact, or of policy, which remain to be decided by the Government, and on which the disposal of the case must depend, should next be stated, and the case will then be in a condition for the Board to pass a decision on it.

To get up the case, however, in the manner I have proposed, would manifestly call for the exclusive devotion of more time than our Political Secretary could possibly spare from his arduous current duties.

The usual course, under such circumstances, would be, to refer to the Agent at Surat, and require him to draw up such a report as I have described; as, however, it is of importance to avoid delay, and many of the documents required may not be in the Surat records, I think it would be desirable to have the report drawn up here, by some officer who could have access to the records of Government.

I propose, in the event of the Act for creating a second Revenue Commissioner becoming law, to appoint Mr. Blane to that post, and as some time may elapse before the Act in question is finally passed, and the necessary regulations of Government thereupon proposed, I have, at a personal interview, ascertained that Mr. Blane will cheerfully employ a part of the intervening period in collecting and putting in shape the information required on this question.

If the Board concur with me in this opinlon, I would suggest that Mr. Blane be directed to put himself in communication with the Political Secretary, and to furnish such a report as I have endeavoured to describe, the materials for drawing up which will be furnished to him by the Secretary to Government. Mr. Blane should be particularly requested to complete his report with all possible despatch.

Parell, 18 October 1842. (signed) *G. Arthur.*
G. W. Anderson.

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2 May 1856.

From *D. A. Blane*, Esq., late Political Agent in Kattewar, to *J. P. Willoughby*, Esq., Secretary to Government, Bombay, dated 5th November 1842.

Sir,

5 November 1842. I HAVE the honour, with reference to your letter of the 20th instant, to submit the following report on the points as specified in paragraph 2d thereof, bearing on the succession to the nawabship of Surat.

2. The title of the family of the present Nawabs of Surat is derived from their ancestor Mea Atchin, of whose history there is the following notice in the Minute by the Honourable J. Duncan, dated 13th August 1798.

"Teigh Beg, dying in the year 1746, appears to have shortly thereafter had "for his successor, as Hakim or Governor of the town, the Nawab Sufder Khan, "whose son, Vukar Khan, entered at the same time on the killadary or com- "mand of the castle.

"The peaceable state of things proved, however, but of short continuance, "for in or about the year 1748 a Syed named Mea Atchin, otherwise known "under the name of Mayaw-ud-deen Khan, and the grandfather of the present "Nabob, having married into the family of the late Teigh Beg Khan, was able, "through the assistance of the Begum, his widow, and of his own relation Ali "Nawaz Khan, to possess himself, under colour also of the royal authority, of the "castle from Veekar Khan; he then applied for the assistance of the already "named Damajee, agreeing, in return, to give up a fourth of the revenues of "Surat, and by this support, and that of the English, he was able also to expel "Sufder Khan from the durbar or civil government of the city, in which he "continued to rule till 1751, when he was in his turn attacked by Vukar Khan "and obliged to abandon the town and seek refuge in the castle, which fell, in "consequence of these dissensions, into the custody of Seidy Mussaood, of the "family of the already named Seedees of Rajapoor or Ginjera.

"In the prosecution of the contest between Vukar Khan and Mea Atchin, the "former is stated to have also applied for assistance to Damajee, on a stipula- "tion that he should enjoy half of the revenues of Surat; but when the business "was accomplished, and his father Sufder Khan returned from Tatta (whither "he had proceeded on being in 1748 drawn out by Atchin), objections were "raised by the said khan, who had by this time resumed the administration, to "the payment of so large a proportion; and, instead of half, it was settled to "give Damajee only a third of the mokant and other income, and, in 1752-3, "Damajee agreed, among other concessions, to cede to his superior, the "Peishwa, one moiety of his chout, or rather third share of the Surat revenue.

"And in consideration of the Seedys having also latterly promoted the recall "and restoration of Sufder Khan, he is stated to have obtained from the latter, "in right of the tunkha, for the support of the fleet, a third in the Ghulla "Mandanie, or tolls levied on grain, but a like proportion in the income from "the courts of justice; but dissensions soon after arose between Sufder Khan "and his relation, Ali Nowas Khan, on the one part, and the Seedee on the "other, so that in January 1757 a negotiation was set on foot between them "and Mr. Ellis, our chief at Surat, for expelling the Seedy from the castle, "which was to be given up to the Nabob, and the fleet to be consigned to the "Company, for the support of which they were to receive from the Nabob a "lac of rupees per annum, but political considerations prevented our then "availing ourselves of this offer, and other events intervened to create a differ- "ence between the Nabob and Ali Nowas Khan, who had connected himself "with the Seedy and the Dutch, and whose views were ultimately directed to "the Nabobship, in which the said Nowas Khan had for opponent Pharis Khan, "a man who, being at that time also protected by the Mahrattas, and secretly "favoured by Sufder Khan. This last circumstance appears to have induced "the Bombay Government to resolve, in December 1757, to open a correspond- "ence with him; but meanwhile Sufder Khan died suddenly in January 1758, "supposed to have been taken off by poison, by his relation, the aforesaid Ali "Nowas, who became thereon Sufder's successor in the Hakim or Nabobship "of Surat; as had, in 1756, the Seedee Ahmud Khan, that of his father Mus- "saoed, in the custody of the castle.

"The people of Surat appear, however, to have been so dissatisfied with the "Seedee, and with Ali Nowas, that in the same month of the latter's accession,

"they

" they offered, through Mr. Ellis, to make up for five years a deficiency of two " lacs of rupees per annum in the receipts from the tunkha, or assignment for " the support of the fleet, and of the funds for the maintenance of the castle, if " the Company would resolve to take possession of them, which they appear to " have been again deterred from attempting, in dread of the resentment of the " Mahratta Government, who had views at this time of taking Surat to them- " selves, notwithstanding our having, in March 1758, proceeded so far as to " enter into a formal treaty with Pharis Khan, stipulating to put him in posses- " sion of the government of the town, taking to ourselves the castle and fleet, " Pharis Khan being at the expense of this expedition, for which he bound the " phoorga or custom-house, besides two lacs, to be raised by a veram or levy on " the city, in lieu of plunder, to the army, and other articles, not material here " to recite. a May 1856.

" This suspension of proceedings on our part afforded time for another revo- " lution in Surat, occasioned by Mea Atchin, alias May Nedden Khan, who had " in his dispossession in 1757 (as noticed in the 6th paragraph) repaired to " Bombay, where his family having been left, his grandson, the present Nabob, " was born here about the year 1755; after which Atchin was able, by his " own exertions, aided by the support of Seedy Ahmed, the commandant in the " castle, and the influence of that branch of the late Teigh Beg's family into " which he had married, to expel in December 1758 Ali Nowaz from the " Nabobship, and to effect his own reinstatement.

" Between the period of the discontinuance of our preparations in the early " part of 1758, in favour of Pharis Khan, and the end of Ali Nawas's govern- " ment in December following, some injuries had been experienced by our " people to such a degree, that in September two of the English Moody's " nephews had been mortally wounded from the castle by one of the Seedee's " people, for which no redress could be procured either from the then Nabob " or from his successor, Mea Atchund, after whose succession some lesser " instances of insult being experienced, these circumstances, joined to a view of " the advantages that might accrue from our success, and a desire to anticipate " the designs either of the Mahrattas or of any European nation, led in the " beginning of the year 1759 to a renewal of the intention to obtain for the " Company the castle and the fleet, and to fix Pharis Khan in the civil govern- " ment of that city, in concurrence, as appears, with the wishes of a considerable " number of the inhabitants of Surat, and in consequence of the solicitations " of Seedy Jaffur and Mully Ulla, with others of that Khan's party, or at least, " if that was found impracticable, to make him Nayb to Atchin, upon the first " intelligence of which from Bombay, the chief and all the gentlemen left Surat " and went to the Bar except Mr. Erskine, who remained in the city; but for " whose security and that of the factory, we had, however, the family of the " then ruling Nabob Meah Atchund, that having hitherto continued at Bombay, " had been just at this time sent back to Surat, but were now detained at the " Bar, on board of one of our vessels, till it should appear how affairs turned out, " though it was afterwards agreed to release the Nabob's women (detaining only " his nephew Meer Massum), hoping thereby entirely to alienate the said " Atchund from the Seedy, at the same time that, to deter Naryas (*i. e.* the " Pieshwa's) and Damajee, the Guicowar's agents from taking part against " us on this occasion, letters were written to them and to Narao Punt, the " commander-in-chief of the Mahratta fleet at the Bar, to assure them that there " was no intention to trench or innovate on their master's just rights and " interests at Surat.

" Thus circumstanced Mea Atchen intimated to Mr. Erskine his being willing " to join against the Seedee, provided he had security for the permanency of " his own government in the city, which he at the same time signified his " having heard that we were bringing Pharis Khan to supplant him in, for which " purpose the fleet accordingly arrived on the 15th of February with a body of " land forces, consisting of 800 European Infantry, of 1,500 Sepoys, and of a " detachment of the Royal Artillery; but their late arrival was reported by the " chief and council to have not only lost the spring, but thrown a damp on " the party, for Pharis Khan had given the Seedy, &c. more time for preparing " for his defence and strengthening his party, notwithstanding which they " were still in hopes of accomplishing the object, towards the promotion of which " it

2 May 1856.

" it appears that there was a Syed in the town, who, together with Seedee Jaffur, " were strenuously our friends on that occasion.

" On the 19th February 1759, a serpaw, horse, sword, &c., arrived from Nana " to Atchund, who, it became certain, 'would never enter into any agreement " for anything less than the government,' exclusive of which he appeared " willing that 'we should give to Pharis Khan what we pleased.' It was also " found that none of Pharis Khan's party stirred in his favour within the town, " the cause of which was explained in a private conference between Mr. Spencer " and Wally Allee on the 1st March, whereat it was by the latter pleaded, that " all the women of the family of Teigh Beg and Sufder Khan had of late so " attached themselves to Atchund and his sons, that both he (Wully Ullee) and " Jaffer were now desireus only of Pharis Khan's coming in as Naib to Atchund, " but not as nabob, in pursuance of which it was determined to proceed " accordingly, and a treaty was entered into with Atchund to that effect on the " 4th March, on which day the Seedee agreed to give up the castle and the " fleet.

" By the stipulations with Atchund on this occasion, he agreed that Pharis " Khan should be appointed to the office of Naib in its greatest extent, as in " the time of Sufder Khan, and that whatever articles Pharis Khan had given " in writing or promised to the Honourable Company, the particulars of which " could not then (as is mentioned in the body of the treaty) be drawn out, " should be fully complied with without the least diminution, and Mr. Spencer " afterwards received a hookum or order, under the vizier's, dated the 2d " Shabaun, in the 6th year of the reign, to advise with the Nabob Merjeen- " uddeen Khan in the government of the city; ' and in conjunction (as the " translated copy of the deed continues to express) with the above, renounced " so to carry on matters as may be most conducive to the good of the place and " the honour of his Majesty, by assisting one another,' as also a perwannah " under the coochuk or small seal of the Nawaub Wuzeer ul Mumalick, Nizam " ul Moolk Bahader, desiring Mr. Spencer particularly to look to the peace of " the inhabitants, and the preservation of his Majesty's castle.

" There is also a Hushhoothoocum, under the great seal of the same Nawaub, " authorising and directing Mr. Spencer to take care of his Majesty's castle, " and of the preservation of the trade in those seas, which bears date the 1st " of the month of Zicada, in the 6th year of the reign, or 24th June 1759, " followed by an imperial phermaun, under date the 11th of Moharreem, or " 4th September 1759, with a grant of the killadarree or government of the " castle of Surat, together with a dustuck, or order from the Khansaman, on " the 2d of the same month of Mohurreen, answering to the 25th of August " 1759, committing the charge of the king's fleet to the Company, and an order " under the vizier's seal, issued to them for the maintenance thereof, to the " amount of two lacs of rupees per annum, and rendered payable by Mayenuddeen, " the Governor of Surat, being, as expressed in the vizier's order of the 25th " of Mohurrem, or 18th September 1759, the usual assignment for the fleet, " as described to have stood included since the time of Aurungzebe (*vide* para. " the 4th) in the Surat charges, exclusive of the amount required to be annually " remitted to court."

3. Mea Atchund, alias " Mayenuddeen Khan," died on the 27th February 1763, and his son, Mea Cootuhuddeen, was installed by the Honourable Company in the dignity of nawab on the 14th March following.

4. Cootuhuddeen died in 1790, and his son, Mea Nizamuddeen, after a delay of nearly two years, was invested, by the sole authority of the Company's Government, with the nawabship on the 27th December 1792, under the name of " Kaymuddowla."

5. On the decease of Kaymuddowla, and as a condition to the elevation of his brother Nusseeruddeen to the nawabship, the treaty of 1800 was entered into, declaring and specifying the rights and privileges to be thenceforth enjoyed by the Nawab.

6. Since that event, one succession has occurred in the person of Mea-ufzul-uddeen Khan, the son of the above Nusseer-uddeen, and his decease on the 8th August

August last, without any direct male heir, now brings this question of succession under discussion. 2 May 1856.

7. Regarding the treaty in 1800, the fullest details are given in the minutes and diaries of the Honourable Mr. Duncan; but, for the purpose of showing the circumstances under which it was concluded, it may be sufficient to refer to the following extract of the letter from the Governor-general the Earl of Mornington to the Honourable Jonathan Duncan, dated Fort William, 10th March 1800.

"The terms of the treaty concluded with Moyenuddeen Khan in 1759, the "powers which devolved to the Company as Governor of the Castle and Commanders of the Fleet at Surat, as detailed in the statements of Mr. Erskine, "and in the minute of Mr. Seton, dated the 15th March 1796, the reservation "to the Company by the treaty of 1759 of the appointment of a Naib to the "government of the city, vested with all the powers exercised by that officer "during the administration of Sufder Khan, the investigation instituted into "every branch of the government of the city, under the orders of the Honourable Court of Directors of the year 1761, founded on the rights which the "Company had acquired, with the arrangements made in consequence of that "investigation, and the participation of the Company in the revenues, preclude "all doubt of the original right of the Company to exercise a joint control "with the Nawab Myenuddeen Khan over every branch of the administration "of the city.

"But whatever doubt might have arisen as to the exact limits of the authorities of the Company and the Nawab Moyenuddeen Khan, it appears to us "that all questions on that subject necessarily ceased on the demise of that "Nawab.

"On a reference to the treaty of 1759, concluded with Moyen-ud-deen, we "find that it was only a personal engagement with the Nawab, and that it did "not extend to his heirs. Independent of the terms of the treaty, the discussions which passed in 1763, on the death of Moyenuddeen, as well as the "letter from your Government, dated the 25th March 1790, when the office of "Nawab again became vacant, by the death of Kotuluddeen, prove it to have "been the general sense, that the operation of the treaty of 1759 ceased on the "demise of Moy-en-ud-deen.

"The power of the Mogul having also become, in fact, extinct, as is evinced "by the result of the application made for his sanction to the succession of the "late Nawab, it follows that the Company, not being restricted with respect to "the disposal of the office of Nawab by any specific treaty, are at liberty to "dispose of it as they may think proper.

"This right of disposing of the office of Nawab is accompanied by an indispensable duty of providing a just, wise, and efficient administration for the "affairs of Surat; the lapse of the powers of government having left no other "party excepting the Company in a state to protect the persons and properties "of the inhabitants of that city.

"The late Nawab, therefore, and his father, Kotul-ud-deen, must be considered to have succeeded to the office of Nawab not in virtue of the treaty "of 1759, concluded with Moyen-ud-deen, but through the favour and friendship of the British Government, extended to them, in consideration of the "connexion which subsisted between their ancestor, Moyen-ud-deen, and the "Company.

"The same equitable principle will guide our determination respecting the "succession on the present occasion, but with such limitations as the safety and "good government of the city demand.

"The defenceless state of Surat has for many years past afforded the most "serious grounds of apprehension, and a variety of additional considerations "arising out of recent events (several of which are adverted to in the Minute "of Lieutenant-general Stuart, transmitted with your letter of the 21st January "last), render the placing the city in a respectable state of defence an object "of the greatest importance to the British interests.

"With regard to the internal government of the city, the frauds, exactions "and mismanagement in the collection of the revenue, the avowed corruption "in the administration of justice. and the entire inefficiency of the police, "as manifested in the different tumults which have occurred in the city, and

2 May 1856.

"particularly that excited in 1795, afford abundant evidence that the Nabobs "were as incompetent to conduct the internal government of the city, as to "provide for its internal defence.

"It is obvious that those important objects can only be attained by the Com- "pany's taking the entire civil and military government of the city into their "own hands, and, consequently, it is their duty, as well as their right, to "have recourse to that measure.

"You will explain the grounds of this determination to Nusseer-ud-deen, and "deliver to him the enclosed articles of agreement, his acquiescence in which "must constitute the condition of his being allowed to succeed to the office of "Nabob."

8. Referring to the above history of the connexion of the honourable Company with the Nawabs of Surat, the inquiry, as regards the facts of the case, would seem to be comprised in the following queries:

1st. Has the family any right to either dignity or stipend other than that which is conferred by the treaty of 1800? If they have such right, what is the nature and extent of it, and are the dignity and stipend necessarily connected or not?

2d. In either case what do the treaty, or any records of that or any subsequent period, show to have been meant by the word "heirs"?

9. On the first head I would refer to the sentiments of the Governor-general as expressed in the letter above quoted, which are, I think, conclusive against any hereditary title previous to the treaty of A.D. 1800. This point, however, becomes of less immediate importance, if, as I imagine, it be found that an hereditary right has been conferred by the latter treaty.

10. In the preamble the treaty in question is stated to be "on behalf of the "honourable English Company and their successors, by the Hon. Jonathan "Duncan, Governor of Bombay, vested with full powers for that purpose by "the said Governor-general, on the one part; and by the Nawab, Naseer-ud- "deen, and his heirs and successors, on the other part;" and in the provision relating to the stipend, which is contained in article 4, "The English Com- "pany agree to pay to the Nabob Naseeruddeen and his heirs, out of the reve- "nues of Surat and its dependencies, in four equal quarterly payments, one "lac of rupees annually, which shall be considered to be the first charge pay- "able from the said revenues. The Company also engage to pay to the said "Nabob and his heirs, in addition to the above-mentioned lac of rupees, "a proportion of one-fifth of the annual revenues now arising, or which may "hereafter arise from the said city and its dependencies, after deducting the "said lac of rupees, the sum payable to the Mahrattas, and the charges of "collection. The residue of the revenues, after the foregoing deductions, shall "be at the disposal of the said Company."

11. Explanatory of the above we also find the following particulars in the diary of 12th May 1800: "On Mr. De Souza's arrival, I learnt that the Nabob had been all along confidentially consulting Vissonath, Mr. Seton's servant, who had, however, kept the matters a secret from his own master (which is also conformable to what the latter this day told me); but from Mr. De Souza being an old friend and a guest of Mr. Seton's, Vessoonath ventured to-day to mention to him that all the real objection the Nabob seemed to have to the signing of the treaty was from the 4th article not having the words 'for ever' after the word 'heirs' in the second line, and that instead of an uncertain one-fifth, estimated to amount to about 60,000 rupees a year, he wished to have a sum of two lacs on the whole, unliable to contingencies. Vissoonath had sent for the Persian copy of the treaty to the Nabob's house, to point out where the defect of the words 'for ever' stood, that Mr. De Souza might get this objection removed; but matters being now in so fair a train, I told Mr. De Souza to go home, and send back the treaty, if it had arrived during his absence, that no cause for delay might ensue, assuring also Vissoonath that a stipulation for a man and his heirs meant 'for ever,' or until such heirs become extinct." Likewise in the diary of the 14th June 1800, with reference to a representation from the Nawab, as follows: "If he considered a little, he must admit that he was by no means reduced to a level with the other inhabitants, he and his family being,

being, on the contrary, secured in special privileges, such as a constant succession to the nabobship, and a freedom from the jurisdiction of the court of justice." 2 May 1856.

12. With respect to the necessary connexion of the dignity and stipend, the wording of the treaty is in some measure indefinite. In article 4, relating to the stipend, the word "heirs" is used without specifying "heirs" to the nawabship; but, on the other hand, the stipend was fixed in lieu of revenue derived from the office of Nawab; and upon the succession of the lately deceased Nawab, the only one under the treaty, the dignity and stipend were continued to him as a combined inheritance.

13. Some ambiguity in like manner exists from the wording of the treaty as regards the meaning of the word "heirs." The preamble uses it with reference to the dignity, and article 4, with reference to the stipend, from which, as well as from the explanatory particulars in the diary, it would seem that both are included as hereditary.

14. Mr. Elliott has stated the law, if hereditary be taken to mean "heirship," according to the exposition of the Mahomedan lawyers; but the one succession above referred to is in opposition to the applicability of the common law of inheritance; and on the occasion of a claim being raised by the mother of the deceased, as alluded to in the extract of her petition transcribed in the margin,* the Bombay Government, in a letter of 1st April, No. 549, of 1822, then decided "that the Government cannot interfere in the family disputes of the Nabob."

15. In the above remarks I have abstained from touching upon any questions of law or expediency which a full discussion of the merits of the case might be supposed to have suggested, conceiving the examination of such questions not to be included in the tenor of my instructions; and in the adoption of this view of them, I trust I may be conforming to the intentions of the Honourable the Governor in Council.

I have, &c.

(signed) *D. Blane*,
Late Political Agent in Katteewar.

Katteewar,
5 November 1842.

(No. 2,561.)

MINUTE by the Honourable Mr. *Anderson*. 18th April 1843.

THE information contained in the Minute of the Honourable the Governor is so full and complete that I can really add nothing to it, and have, therefore, only to offer an opinion upon the question at issue.

To me it appears that the office or dignity of Nawab has become extinct by the demise of the late Nawab without any male lineal descendant to take up that dignity as left by the conditions of the treaty of 1800.

Before that treaty the office was not hereditary. The whole information shows this, that it was an office to be conferred by the paramount power, not to be succeeded to. It was on this right that the Governor-general deprived the Nawab

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* My husband, Qoolluboodawla Buhadoor, having quitted this unstable world, and thus attained lasting immortality, the gentlemen who are in authority at this place (Surat) caused the light of mine eyes, my dear son Meer Ufzooloodden Khan Bahadur, to succeed to the exalted situation of my much lamented husband, which circumstance afforded me very considerable gratification and pleasure; and although, as my late husband during his lifetime was pleased to grant me such a deed of gift as placed everything at my disposal, I might consequently, had I thought fit, diminished his splendour and dignity as it pleased me, yet I was not desirous of acting in such a manner, nothing in the world being nearer to me than this my son; such is my maternal affection towards him! But my aforementioned son, being hurried away by the heat and inexperience of his youth, and probably urged on by the instigation of those who wish to create a difference between us, has adopted such a line of conduct as to cause me much grief and distress.

2 May 1856.

Nawab Nasseer-ood-deen, in 1800, of all power, and left him only with the titular dignity of Nawab, with a stipend or pension, and with exemption in his family and servants from the control or jurisdiction of our courts of justice.

Had there been a male descendant of the late Nawab, I consider he must have succeeded to the dignity it left by the treaty of 1800 without any hesitation, as that treaty was made with the then Nawab for himself, his heirs, and successors; so that, in fact, from that time the office, to its extent as left in the conditions in the treaty, became hereditary, and the late Nawab succeeded his father without any further question than what may be considered as mere form.

But the state of the question is now this, that the late Nawab has demised without any male issue, or male lineal descendants who can be considered as his legal heir and successor.

The office or dignity, such as it was left by the treaty of 1800, has become, therefore, extinct, and is void. Thus it appears to me.

But the Nawab has left certain heirs female and other heirs, who may be legally entitled to share in whatever property may be declared to be the subject of inheritance.

In this the first and chief point is the stipend or payment conditioned for in the treaty. Is this payment to be an inheritance dividable among heirs when, by default of a lineal male descendant, there is no succession to the nawabship?

This question depends entirely upon the construction to be placed upon the treaty and in its 4th article.

I doubt if, at the time of the treaty, the contingency of the lapse of the nawabship was thought of; but as the treaty is worded, it appears to me that when there are heirs we must consider them entitled to the payment conditioned for, though I have no doubt that payment was intended only to be for the support or maintenance of the persons who in the ccurse of things would become to be Nawabs.

If the Government of India determines the construction of the treaty to be such that the heirs general are to enjoy the income provided in the treaty, it will be an easy matter to determine who, according to the Mahomedan law, are to be considered as heirs, and in what shares.

It is to be kept in view, that, besides this payment provided in the treaty, there is much other property belonging to the estate, such as landed property in valuable gardens around Surat, in houses, jewels, ornaments, horses, elephants, &c.

The remaining point that I have to offer an opinion upon is this, that should it be still determined to keep up the dignity of Nawab, upon whom should it be conferred, and in what manner. I think upon the Bukshee, who is the only male existing of the family of the Nawab. He has always been considered of the family. He is next in rank to the Nawab, and has always been looked up to and respected in Surat as belonging to the Nawab's house, and as next to its chiefs.

I consider therefore his pretensions as far higher, as a matter of choice, than the pretensions of the son of Meer Sufuraz Ulee, married to the daughter of the Nawab. Should it be thought of to confer upon the bukshee or any other, the dignity of Nawab, an arrangement will be required by which the family of the late Nawab may be amply provided for, and a very clear intimation should be made of what is the understanding as to exemption of the Nawab and his family from the jurisdiction of our Courts, a subject that has ever been a fruitful source of vexation and correspondence.

On this question, should the matter come to be acted upon, the last orders of the Honourable Court would form a clear basis for the arrangement to be entered into.

18 April 1843. (signed) *G. W. Anderson.*

2 May 1856.

MINUTE by the Honourable the Governor, concurred in by the Honourable Mr. *Anderson*, dated 24 April 1843. 24 April 1843.

I AM much obliged to Mr. Anderson for the above exposition of his opinion of this case, which I am happy to perceive coincides with mine. A short letter should now be drafted sending these minutes to the Governor-general, and briefly calling his Lordship's attention to the points which require his consideration and decision.

24 April 1843. (signed) *G. Arthur.*
G. W. Anderson.

No. 85 of 1843.

FROM *J. P. Willoughby*, Esq., Secretary to Government, Bombay, to *J. Thomason*, Esq., Secretary to the Government of India, with the Right Honourable the Governor-general. 10 June 1843.

Sir, 10 June 1843.

I AM directed by the Honourable the Governor in Council to transmit to you for the purpose of being submitted to the Right Honourable the Governor-general of India, copy of a despatch addressed by this Government to the Honourable the Court of Directors, under date the 22d August last, No. 32, a copy of which was in due course forwarded to the Government of India, on the 31st of the same month, reporting the death on the 8th of the former month, without male issue, of Meer Rifzooloodeen Khan Kumrood Dowleh, Ushmut Jung Bahadur, Nawab of Surat, and stating the preliminary measures which had been adopted by this Government, in consequence of that event.

2. Enclosure No. 2 to this letter is a copy of a minute recorded by the Honourable the Governor, on the 10th April last, in which his Excellency reviews the circumstances under which the Honourable the East India Company and the Nawabs of Surat first obtained a footing in that quarter, the nature of the relations which have from time to time existed between the British and the Surat Nawabs, and states his opinion in regard to the question, whether the office and dignity of Nawab of Surat "has become extinct in consequence of the death of the late Nawab without male issue, and if so, whether the allowance of *Rs.* 150,000 granted to the Nawab by the treaty of 1800, should or should not be continued to the heirs of the deceased."

3. Enclosure No. 3 to this letter is a copy of a minute recorded by the Honourable Mr. Anderson, on the 24th April last, stating his views upon the subject, which coincide in the sentiments contained in the Honourable the Governor's minute.

4. With a separate collection marked "A." I am desired to transmit to you copies of the documents forming Appendices A. and H. to the Honourable the Governor's minute, together with a copy of a report marked B., from Mr. Elliot, late agent for the Honourable the Governor at Surat, dated the 28th August last, reporting the result of an investigation which he instituted into the claims of different individuals claiming heirship to the late Nawab, and into the validity according to the Mahomedan law, of their several pretensions to inherit the allowance of *Rs.* 150,000 enjoyed by him.

5. In the 1st and 64th paras. of the Honourable the Governors' minute, his Excellency has entered into a review of the past connexion of the Honourable the East India Company with the Nawabs of Surat; and in the 65th and following paras. of the minute, his Excellency states his opinion upon the four following points:

1st. Has the office and title of Nawab of Surat become extinct, in consequence of the death of the late Nawab, without male issue.

2 May 1856.

2d. If so, is it expedient to renew the office and title of Nawab, and if so, in whose favour should the indulgence be granted ?

3d. Is the British Government bound to continue the stipend of 150,000 rupees granted to the Nawab, under Article IV. of the Treaty of 1800 ? and,

4th. In the above case to whom, and in what proportions, should the amount of 150,000 rupees be divided ?

6. The Honourable Mr. Anderson having, as stated in the 3d para. of this letter, expressed his concurrence in the opinions offered by the Honourable the Governor on the above points, the questions which they contain are now referred for the consideration and decision of the Right honourable the Governor-general of India.

I have, &c.
(signed) *J. P. Willoughby*,
Bombay Castle, 10 June 1843. Secretary to Government.

No. 1. Letter to the Honourable the Court of Directors, dated 22d August 1842, No. 32.
„ 2. Minute by the Honourable the Governor, dated 10th April 1843, with Enclosures (A. and H.)
„ 3. Minute by the Honourable Mr. Anderson, dated 18th April 1843.
„ 4. Further Minute by the Honourable the Governor, dated 24th April 1843, concurred in by the Honourable Mr. Anderson.
„ 5. Minute by the Governor, dated 13th September 1842.
„ 6. Memorandum by the Political Secretary, dated 14th October 1842.
„ 7. Further Minute by the Governor.
„ 8. To the Political Agent in Kattewar, dated 20th October 1842, No. 2,577.
„ 9. From Meer Numrooddeen, Nabob of Surat, dated 19th March 1814.
„ 10. From the Chief at Surat, dated 24th March 1814, with Enclosures.
„ 11. To the Revenue Accountant, dated 4th April 1814.
„ 12. From Revenue Accountant, dated 13th June 1814, with Enclosure.
„ 13. To the Chief at Surat, dated 20th June 1814.
„ 14. Extract, para. 30, of a Letter from the Collector of Surat, dated 20th April 1816.
„ 15. From the Collector and Custom Master at Surat, dated 5th August 1817, with Enclosure.
„ 16. From the Collector and Custom Master at Surat, dated 26th July 1817.
„ 17. To the Acting Chief at Surat, dated 30th August 1817.
„ 18. From ditto, ditto, dated 10th September 1817.
„ 19. Resolution by the Board.
„ 20. To the Chief of Surat, dated 9th October 1817.
„ 21. From the Chief at Surat, dated 24th February 1818.
„ 22. Reply to, dated 7th March 1818.
„ 23. From the Chief at Surat, dated 25th March 1818.
„ 24. Translation of a Letter from the Nawab of Surat, dated 24th March 1818.
„ 25. To the Secretary and Translator in the Office of Country Correspondence, dated 14th April 1818.
„ 26. Copy of a Letter from the Right Honourable the Governor to his Excellency the Nawab of Surat, dated 20th April 1818.
„ 27. To the Chief of Surat, dated 23d April 1818.
„ 28. Minute by the Honourable the Governor, dated 15th August 1842.
„ 29. From the Acting Agent at Surat, dated 8th August 1842, No. 134.
„ 30. Reply to, dated 16th August 1842., No. 4,221.
„ 31. Resolution of Government in the Political Department, dated 16th August 1842, No. 2,156.
„ 32. Copy of a Letter from the Honourable the Governor to Ameeroonissa Begum, Widow of the late Nawab of Surat, dated 16th August 1842, No. 2,209.
„ 33. Minute by the Governor, dated 26th August 1842.

No. 34. To

No. 34. To the Agent for the Governor at Surat, dated 27th August 1842, No. 2,228.
„ 35. From ditto, ditto, dated 22d August 1842, No. 137.
„ 36. To ditto, ditto, dated 31st August 1842, No. 2,261.
„ 37. Substance of a Letter from Meer Jaffer Ally, Son-in-law of the late Nawab of Surat, dated 16th August 1842.
„ 38. Substance of a Letter from Ameeroonissa, dated 16th August 1842.
„ 39. Petition from Meer Surfrazallee, dated 8th October 1842.
„ 40. Reply to, No. 2,627, dated 25th October 1842.
„ 41. Petition from ditto, ditto, dated 24th October 1842, with Enclosure.
„ 42. Reply to, dated 26th October 1842, No. 2,630 (A.).
„ 43. Substance of a Letter from Shahzadee Begum, Niece of his Excellency the late Nawab of Surat, dated 11th October 1842.
„ 44. Substance of a Letter from Badshaw Begum, dated 13th October 1842.
„ 45. Substance of a Letter from Badshaw Begum, dated 18th October 1842.
„ 46. To the Agent for the Governor at Surat, dated 27th October 1842.
„ 47. Substance of a Letter from Padshah Begum, dated 29th October 1842.
„ 48. To the Agent for the Governor at Surat, dated 7th November 1842.
„ 49. From the Agent for the Honourable the Governor at Surat, dated 5th September, No. 143 of 1842.
„ 50. From the Acting Sub-Treasurer, dated 13th September, No. 450 of 1842.
„ 51. To ditto, ditto, dated 16th January, No. 108 of 1843.
„ 52. From the Agent for the Honourable the Governor at Surat, dated 15th November, No. 180 of 1842, with Enclosure.
„ 53. To the Agent for the Honourable the Governor at Surat, dated 24th January, No. 188 of 1843.
„ 54. From the Agent for the Honourable the Governor at Surat, dated 25th November, No. 184 of 1843, with Enclosure.
„ 55. To ditto, ditto, dated 24th January, No. 189 of 1843.
„ 56. From ditto, ditto, dated 2d February, No. 14 of 1843, with Enclosures.
„ 57. To ditto, ditto, dated 14th March, No. 571 of 1843.
„ 58. From the Acting Sub-Treasurer, dated 26th January, No. 71 of 1843.
„ 59. Memorandum by the Political Secretary, dated 23d February 1843.
„ 60. To the Acting Sub-Treasurer, dated 18th March, No. 625 of 1843.
„ 61. From the Agent for the Honourable the Governor at Surat, dated 3d September, No. 141 of 1843, with Enclosures.
„ 62. From the Acting Sub-Treasurer, dated 21st April, No. 216 of 1843, with Enclosure.
„ 63. From the Agent for the Honourable the Governor at Surat, dated 17th March, No. 31 of 1843, with Enclosures.
„ 64. To ditto, ditto, dated 25th May, No. 1,107 of 1843.
„ 65. From ditto, ditto, dated 28th August 1842, No. 139, with Enclosures.
„ 66. Memorandum by the Political Secretary, dated 10th September 1842.
„ 67. Substance of a Letter from Meer Jaffer Ally Khan, Son-in-law of his Excellency the late Nawab of Surat, dated 22d September 1843.
" 68. Petition from Malirezeyool Huck Vakeel, dated 19th September 1842.
„ 69. Substance of a Petition from Badshah Begum, Widow of his Excellency the late Nawab of Surat, dated 26th September 1842.
„ 70. Petition from Meer Surfraz Allee, dated 9 November 1842, with Enclosure.
„ 71. Petition from ditto, ditto, dated 23d November 1842, with Enclosure.
„ 72. Petition from Bukhby Aroonissa Begum, dated 21st August 1842, with Enclosure.
„ 73. Substance of a Letter from Meer Momoddur Khan, Grandson of Meer Mujmoodeen Khan Sufdurel Moolt Bahadoor Buckshee, of Surat, dated 15th August 1842.
„ 74. Substance of a Letter from Bukhtiar Oonissa Begum, Daughter of his Excellency the late Nawab of Surat, dated 17th August 1842.
„ 75. Petition from Meer Mooeenooddeen Khan Bukhshee, of Surat, dated 2d September 1842.

2 May 1856.

EXTRACT Political Letter to Bombay, dated 20 September (No. 15) 1843.

Answer to Political Letter, dated 22d Aug. (No. 32) 1842. Paragraphs 1 to 6, death of Meer Afzuloodeen Khan, Nawab of Surat, without male issue.

2. You state your belief that by the event now reported the title and dignity of Nawab of Surat have become extinct; you have directed Mr. Elliot to report whether the Nawab has left any heirs in the sense intended by the treaty of 1800, to whom his stipend would by that treaty be still payable. We have not yet received Mr. Elliot's report, but it appears to us that the heirs intended by the treaty must be such as would be entitled to succeed to the rank of Nawab of Surat.

22d June 1844.

FROM the Agent for the Honourable the Governor at Surat, to *E. H. Townsend*, Esq., Secretary to Government, Bombay.

(No. 5323.)

Sir, 22 June 1844.

30th Sept. 1843, No. 2,343. 19th Dec. 1843, No. 3,241.

WITH reference to your letters to my address, dated as per margin, I have the honour to submit nominal lists of the relations and dependants of the late Nawab of Surat, who have been deprived of the means of support in consequence of his death, and to request that the allowances specified opposite their names may be granted to each individual per mensem for their maintenance, pending the final settlement of the Nawab's affairs, which, owing to the numerous claims that have been presented by his heirs and creditors, I have no expectation to be able to dispose of under a considerable length of time, and it is absolutely necessary that such of the relatives and dependents as have no immediate means of living should be provided for by Government.

2. Most of them have been, and still are maintained by Meer Jaffer Alee Khan, the son-in-law of the late Nawab. The others refuse to acknowledge their dependence upon him, and have up to this period lived on their own resources by borrowing money in the bazar, which they state they can now do no longer, and unless Government affords them the means of living, they must die of starvation. Neither is it right that Meer Jaffer Allee should be burthened any longer with the expense of keeping those from his own resources whom he is now obliged to maintain.

3. Among those who have refused to be dependent on him for maintenance are Doolun Begum *alias* Badshah Begum, one of the widows of the Nawab, and Shahzadi Begum, his niece.

4. I beg to report that this latter lady has lately died, she is therefore no longer in need of an immediate provision. Accordingly no sum is specified opposite her name. But her expenses till the period of her death will have to be defrayed by Government, as well as those of the other persons mentioned in the lists. I have, however, postponed an application on that account, until I can ascertain more correctly than at present, the sources from whence their expenditure was made and its exact amount.

5. The names of the daughter of his Excellency and her mother Ameer Ool Nissa Begum, the other widow of the Nawab, have also been entered in the accompanying lists, but no sum specified opposite their names, as until the final settlement of the Nawab's affairs, I am unable to ascertain the value of their private property, or to say what sum should be allowed them under the decision of the Government of India, conveyed to me in your letter of the 30th September last. They both possess ample means of living from the resources of Meer Jaffer Alee, the husband of Bukhtiarool Nissa Begum, and are in noway dependent on Government for support.

6. Besides, I consider that those ladies are not entitled to any indulgence from Government, in consequence of their refusal to give up to me a considerable amount of property in their possession, consisting of houses, gardens, jewels, &c. which formerly belonged to the Nawab, on the plea that it was made over to them, or the children of Bukhtiarool Nissa Begum, by the Nawab during his lifetime,

lifetime, the truth of which assertion has to be poved. Even the personal jewels of the Nawab which he used to wear on state occasions, as well as the other ensigns of his rank, have been withheld by them on the same plea. Four rings which he had upon his fingers when he died, several gold watches, his hooka, and some silver utensils, which he was daily in the habit of using, being all the jewellery that has been made over to me as belonging to him. These ladies have also jewels belonging to themselves of considerable value, which at first were sequestrated by me, but released as soon as I was satisfied they were personal property, and learnt from the Mahomedan law officer that such property cannot be claimed as a part of the Nawab's estate. It is proper to add, they agreed to allow the personal jewels, &c. of the Nawab to be placed in a box, to be sealed with my seal, and deposited in a safe place under the custody of themselves, an arrangement to which I consented, as I did not feel myself authorised to take possesion by force of any articles in their possession which I must have done, had I determined on the course. I beg to state I have no reason to believe the property left in their possession will be removed from the place in which it has been depoited without my concurrence.

7. The following is an abstract of the persons to whom I have recommended that allowances should be paid monthly, and which should be continued to them till their death, or further orders:

Relations of the Nawab	727
Hurrums, or concubines	120
Le Pallucks	162
Eunuchs	176
Male slaves	12
Female singers	204
Female slaves	215
Female servants	74
Mohtahs	90
Sepoys	96
Household servants	60
Relations of Abdoollabeg	39
	1,975

8. These allowances should in the first instance be debited to the estate of the Nawab in the collector's book in which the revenue derived from his lands, &c. is also brought to account, and on the final settlement of his affairs an adjustment of them can be effected by debiting the surplus of expenditure above revenue to pensions, and political stipends under which head the sums granted to the relations and dependents of the Nawab will have eventually to be paid.

9. That Government may be able to form an opinion as to the time that may elapse before the affairs of the Nawab's estate can be finally wound up, I beg to state that the number of claims which has been registered by me in consequence of the proclamation that was issued under the authority of Government, conveyed in your letter, dated 19th December 1843, is 171; and that the value of the property claimed, the amount of which is stated, is *Rs.* 8,36,202. 15. 10.; several claims of a general nature have been preferred, the amount of which is not stated.

10. I hope to make good progress in the investigation of these claims during the approaching monsoon, but in the meantime I trust Government will not object to authorise the payment of the sums I have applied for, as I consider them urgently necessary.

I have, &c.

Surat, Office of Agent for the Hon. the Governor, 22 June 1844.

(signed) *R. K. Arbuthnot*, A. G.

LIST of RELATIONS of the late NAWAB AFFZOOLOODDEIN KHAN, dependent on him at the time of his Death.

NAMES.	Rs. a. p.	REMARKS.
1. Buckhtiarool Nissa Begum, daughter of the Nawab by a concubine named Ameerool Nissa Begum.	- - -	- - The circumstances of the birth and parentage of this lady are set forth in her memorial to the Court of Directors, dated 20th February 1844, forwarded to Government with a letter from the Agent for the Honourable the Governor, dated 21st February 1844.
2. Amerool Nissa Begum, mother of Bukhtiarool Nissa Begum.	- - -	- - This lady, in the first instance, lived with the Nawab as his hurum or concubine, but was married to him after the birth of their daughter, consequently she now claims a widow's share in his estate. At the time of her marriage, the words "Ateeka Nawab," were inserted in the marriage register to show that she was emancipated from a state of bondage. No sums are specified opposite to the names of these ladies for the reasons given in the letter to which this is an accompaniment.
3. Doolum Begum, *alias* Badshah Begum the great granddaughter of the last Nawab of Broach, she was married 19th May A.D. 1816 to the Nawab of Surat, and claims a share of the inheritance as his widow.	500 - -	- - Shortly after her marriage with the Nawab, this lady was put aside by him, and lived in a retired and humble manner, never being allowed to appear in his presence, the cause of which is unknown; it is said not to be dishonourable to her.
4. Aurush Begum, *alias* Jegree Begum, the widow of Khyrooddien, brother of the late Nawab, married A.D. 1811.	100 - -	- - This lady's husband having died during the lifetime of his father, she is debarred all right to share in the estate of the late Nawab, or her husband's death; she continued to reside with her mother-in-law till the death of that lady, when she was removed to a separate house by the late Nawab, where she has since lived almost as a close prisoner on a very limited allowance.
5. Shahzadi Begum, the daughter of Meer Khyrooddeen, brother of the late Nawab by a concubine, purchased by his father, Nawab Nusseerooddein, afterwards given to his son.	- - -	- - This lady's father died before his father, consequently his daughter, by the Mahomedan law, is excluded from any share in the inheritance of the late Nawab; she had at first separate apartments assigned her, but for some years previous to the Nawab's death was received into his family, and lived with his wife and daughter. Immediately after that event she left their protection by the advice of a eunuch, and set up a claim to the Nawabship. She died on the 6th April 1844, having been on her death bed married to the Bukhshi. No sum is specified opposite this lady's name for the reasons given in the letter, to which this is an accompaniment.
6. Meer Bahdurshah, related to the Nawab through his great grandfather, Meer Movenooddien Khan, whose daughter married Meer Kumroodien Bukshi, by whom she had a daughter, who was the mother of this person. Mooenooddien Khan was the first of the family of the late Nawab, who was promoted to the Nawabship of Surat, an office he obtained from the Emperor of Delhi at the request of the East India Company.	30 - -	- - This person received from the Nawab 30 rupees, besides 5 maunds grain and 10 seer of ghee per mensem, and a donation annually of about 200 rupees in consideration of his relationship. The allowance of 30 rupees is recommended to be continued.
7. Meerza Abdool Rehman, the son of Meerza Mahomedbeg, whose sister married Nawab Hafeezoodein, commonly called Kainool Dowlah, the grandfather of the late Nawab.	10 - -	- - This person is not strictly related to the Nawab by blood, but being connected with him by marriage has been always looked on as a relation, and a small allowance of 10 rupees per mensem, granted him in consequence, which is recommended to be continued.
8. Sheereefa Begum, related to the Nawab through his mother, Zeeaool Nissa Begum, by whom she was brought up.	10 - -	- - As this person was dependent on the Nawab, a small pension is recommended to be continued to her.

List of Relations dependent on the late Nawab at the time of his Death—*continued.*

NAMES.	Rs. a. p.	REMARKS.
9. Meer Budroodein, son of Meer Isaw, who married a sister of Nawab's mother.	15 – –	- - Meer Isaw, besides being regarded as a relation, was a favorite physician, and received 30 rupees per mensem from the late Nawab, besides horse allowance; his son is, therefore, considered entitled to a small pension.
10. Khajeh Ashmatoola, *alias* Meeya Khajjee, connected with the Nawab through the wife of Nawab Hafeezoodien, his grandfather.	50 – –	- - This person, strictly speaking, is not related by blood to the Nawab; but being connected with him through the wife of his grandfather, and having been brought up by him from his infancy like his own son, being permitted to enter the hurrum at all times, and having been always regarded in the light of a relation, living with the Nawab, and receiving an allowance of 30 rupees per mensem for his private expenses, he is considered entitled to a pension.
11. Khajeh Mundeer is the nephew of the above-mentioned Khajeh Ashmutoolla.	7 – –	- - This person, strictly speaking, is not related to the Nawab, but on account of his relationship to Khajeh Ashmulloola he has been always treated as such, and received rupees 7 per mensem, which is recommended to be continued to him.
12. Abdool Ruheen, the half-brother by a concubine of Badshah Begum, the widow of the late Nawab.	5 – –	- - This person was adopted by the Begum when a child of 1 ½ years old, and afterwards allowed a maintenance by the Nawab of 10 rupees per mensem as a horseman, although he performed the duties of a moonshi; he is, therefore, recommended for a small pension.
Rs.	727 – –	

LIST of Hurums or Concubines dependant on the Nawab of *Surat* at the time of his Death.

NAMES.	Rs. a. p.	REMARKS.
1. Booah Dowlut Bahr, aged about 85 years, she was the concubine of Nawab Neejamoodien Khan, by whom she had a son, who died young.	40 – –	- - Since the death of Neejamoodein this lady has resided in the old durbar, the former abode of that Nawab, and has been supported by his successors.
2. Booah Ajjub Bahr, aged about 60 years, she was the concubine of Afzooloodien Khan; she was purchased by his father, Messeeroodein Khan, when a child, who gave her to his son, to whom she bore two children, a daughter born in the lifetime of Meer Nussooroodien Khan, and a son born after Afzooloodein ascended the gadi, both these children died before their father.	40 – –	- - This lady has always been treated with respect by the Nawab, and after the death of his mother, Larlee Begum, *alias* Zesaoolnissa Begum, was entrusted with the care of Nujeboolnissa Begum, his infant daughter, whose mother, another concubine, died soon after the birth of that child. Neejiboolnissa Begum was subsequently married to Akbar Allee, son of Meer Serfuraj Allee, of Baroda, and died without issue.
3. Booah Rung Bahr, aged about 40 years, she was the concubine of Afzooloodein Khan, having been the bond slave of his father, Nusseeroodien Khan, who gave her to him.	20 – –	- - This lady, after living with Afzooloodein Khan, was put away by him about 23 years ago before he ascended the gadi, since that time she has had a separate maintenance.
4. Booah Sulz Bahr, aged about 60 years, she was the concubine of Meer Khyroodein, brother of the late Nawab, by whom she had two children, who both died young.	20 – –	- - This lady was given to Khyroodien Khan on his marriage with the daughter of Chulebi, a celebrated merchant of Surat, as part of his wife's dowry; on the death of Khyroodan, she was supported by his father, Nawab Nusseeroodien Khan, and subsequently by his brother, Afzooloodein, and is therefore entitled to a pension.
Rs.	120 – –	

LIST of Le Pullucks, Persons brought up in the Household of the late Nawab, and dependent on him at the time of his Death.

NAMES.	Rs. a. p.	REMARKS.
1. Wuheedool Nissa Begum, commonly called Misree Bubi, about 18 years of age; she is the daughter of Sheikh Chand, a sepoy; her mother died the day after she was born, when she was given to the Nawab.	50 – –	- - This girl was brought up by the late Nawab with every degree of consideration, and esteemed by him as his own daughter: she now resides with his widow as a part of the family.
2. Oomraobeebi, aged about 12 years; she lost both her parents when she was only six days old; her maternal uncle, Jumaloodein, then gave her to the Nawab.	20 – –	- - This girl was also entirely dependent on the Nawab, and treated by him with regard, though in a less degree than the former, she is therefore considered entitled to a pension; the allowance to both are fixed, so as to admit of their marriage expenses being paid for them.
3. Abdool Sikoor, about 12 years of age; his parents died when he was an infant; he was then given to the Nawab, by whom he was brought up as a dependant.	6 – –	- - These boys are entitled to some consideration, as having been brought up by the Nawab, and therefore recommended for pension.
4. Abool Kureen, about 14 years of age; his parents were Coolies: they gave him to the Nawab when he was a child, by whom he has been brought up as a Moosulman.	6 – –	
5. Beebi Jeyboo, about 35 years of age, given to Nawab Neezamoodien when a child.	- - -	- - This person was subsequently married to Mirza Goolam Mahomed by the late Nawab, who granted her an allowance of three rupees per mensum; she died on or about the 11th April 1844; no sum is therefore specified opposite her name.
6. Beebi Marium, aged about 32 years, was given to Nawab Meer Nusseeroodeen Khan as a child.	15 – –	- - After the death of Nusseeroodein, this girl was brought up by his widow till her death; afterwards she resided with Shah Gadi Begum till she was sent to the old Durbar by the late Nawab, who granted her an allowance of two rupees per mensum, besides food and clothes.
7. Beebi Jurfren, about 62 years of age, she was given to Meer Neezamoodien Khan as a child.	15 – –	- - On the death of Neezamoodein, this person was married by desire of his successor, Nusseeroodein, to Hossein Allee, and furnished with separate house and maintenance, she still resides in the house, and received an allowance from the late Nawab, at the time of his death, of 15 rupees, 8 maunds grain, 15 seers ghee, 1 maund meat, 300 pann leaves, and 1½ rupees for sooparee per mensem, and 50 rupees per annum for clothes. The allowance of 15 rupees is recommended to be continued to her.
8. Velaetee Khanum, alias Khanum Beebe, about 11 years of age, is the daughter of a Sepoy; she was given to Neejeeboolnissa Bugum, daughter of the late Nawab, in whose apartments she continues to reside along with her attendants.	20 – –	*Vide* Remarks at No. 2.
9. Gohur Beebi, about 30 years of age; was adopted by Jeegri Begum, is the daughter of a Sheikh, who gave her to the Begum when she was 4 years old.	- - -	- - This girl has been married by the Begum, since the death of the Nawab to Meeya Abdool. She is not considered entitled to any allowance, but independent of Jeegri Begum.
10. Meer Hoosseinooldein, adopted by Jeegri Begum when he was an infant. His mother is still alive; he is commonly called the Shahzada.	- - -	- - This person is not considered entitled to any allowance independent of Jeegri Bugum.
11. Aram Beebi, aged about 20 years of age; she is the daughter of Seedi Moofta, who gave her to Badshah Begum, the widow of the late Nawab, by whom she was brought up.	- - -	- - This person was married to Meeya Sapin, an inhabitant of Surat, with whom she sometimes resides; she is not considered entitled to any allowance independent of Badshah Begum.
12. Ruheemoolnissa, aged about 14 years; she is the daughter of a person residing at Broach, and has lived with Badshah Begum, since she was an infant.	- - -	*Vide* Remark at No. 11.
13. Kureemool Nissa, aged about 10 years; is the sister of Ruheemoolnissa abovementioned; adopted also as an infant by Badshah Begum.	- - -	*Vide* Remark at No. 11.

List of Le Pellucks, Persons brought up in the Household of the late Nawab, &c.—*continued*

NAMES.	Rs.	a.	p.	REMARKS.
14. Meer Saheb, aged about 1½ years; he is the son of a woman who died about 14 months ago; he was then adopted by Badshah Begum.	-	-	-	*Vide* Remark at No. 11.
15. Sakur Beebi, aged about 40 years; she was given to Nusseeroodein Khan by by a trader, and brought up by him.	15	–	–	- - These persons were entirely dependent on the Nawab for support, though not treated by him with much regard. They are, therefore, entitled to a small pension.
16. Larlee Beebi, aged about 7 years; an adopted child of the above-named Salter Beebi.	5	–	–	
17. Noor Beebi, aged about 7 years; given to Shahzadi Begum, by whom she has been brought up since she was an infant.	10	–	–	- - As this child was entirely dependent on the Nawab for support, and Shahzadi Begum, by whom she was immediately brought up, is dead; she is recommended for a small pension.

LIST of Eunuchs on the Establishment of the late Nawab, of *Surat*, at the time of his Death.

NAMES.	Rs.	a.	p.	REMARKS.
1. Seedee Hilal, aged about 62 years; he was brought to Surat by Jeedee Sohel, the slave of Nowab Neezamoodein, in a ship belonging to that Nawab in 1208 Hejree, or A.D. 1792.	40	–	–	- - This person enjoyed the confidence of the late Nawab in a considerable degree, and was employed by him in all matters connected with his hurum. He usually resided at the old Durbar, in charge of the women who belonged to Neezamoodein Khan, but came to the new palace when required by the late Nawab.
2. Seedee Moozuffer, brought to Surat about 38 years ago by an Arab, and sold to the late Nawab.	7	–	–	- - These persons have continued in attendance on Buktiaroolnissa Begum since the Nawab's death. The latter accompanied Jaffer Allee to Bombay, with the intention of proceeding with him to England. As they have no means of support, they are to be considered entitled to pensions.
3. Seedee Suroor, aged about 35 years; was purchased by the mother of the late Nawab from an Arab, about 22 years ago.	7	–	–	
4. Seedee Ferasutt, aged about 20 years; purchased about 8 or 9 years ago by the late Nawab.	7	–	–	
5. Seedee Jumshed; this person is an old servant, and appears to have been usually treated with consideration; he is about 50 or 60 years of age	30	–	–	- - When Doolim Begum, the wife of the late Nawab, was put aside, this person was placed in attendance on her; besides clothes and food, he had grass, &c. allowed him for a horse.
6. Seedee Roomee, chief eunuch in charge of Shahzadi Begum, and the women of the household of Nawab Nusseeroodein Khan.	50	–	–	- - This person was formerly in attendance on the ladies of Nawab Nusseeroodein Khan, and obtained great influence with Larlee Begum, the wife of that prince, and mother of the late Nawab, through which it is supposed he has amassed a considerable property in jewels and land. On the death of his mistress, he remained in charge of Shahzadi Begum, and the women of her establishment, till the death of the Nawab, when he caused them to separate themselves from his daughter and widow, since which they have been chiefly supported at his expense. He states he received from the late Nawab an allowance of 57 rupees for himself, besides food and clothes, which he estimates at 200 rupees per mensem. The pension recommended is however considered as much as he is entitled to.
7. Seedee Sohel - - - - -	7	–	–	- - These persons, on the death of the Nawab, attached themselves to Seedee Romee, and remained in attendance on Shahzadi Begum till her death. They are considered entitled to pensions as they have no means of maintaining themselves.
8. Seedee Folad - - - - -	7	–	–	
9. Seedee Naser - - - - -	7	–	–	
10. Seedee Ilmup - - - - -	7	–	–	
11. Seedee Furrokht - - - -	7	–	–	
Rs.	176	–	–	

LIST of MALE SLAVES on the Establishment of the late Nawab of *Surat*.

NAMES.	Rs. a. p.	REMARKS.
1. Abdool Sobhan, aged about 45 years, was brought from Songhur by the wuzeer in his infancy.	3 – –	On the death of the Nawab, these persons attached themselves to Bukhtiarool Nissa Begum, his daughter, and are now in attendance on her. They are considered entitled to small pensions as household dependants of the Nawab.
2. Sheikh Mahomed, aged about 40 years, was purchased in the time of Nawab Nusseeroodeen Khan when about eight years old.	3 – –	
3. Ajmutoolla, about 60 years of age, he was purchased by Nawab Nusseeroodein Khan, after whose death he continued to reside with his dependents, and to receive his food and a small allowance in money.	3 – –	On the death of the Nawab, these persons attached themselves to Shahzadi Begum, his niece, and continued in attendance on her till her death. From their situation as household slaves, they are considered entitled to pensions.
4. Hufeezoollo, about 55 years of age, purchased by Nusseeroodein, who gave him to his son Khyroodein.	3 – –	
	12 – –	

LIST of FEMALE SLAVES Employed as Gaen or Singing Women in the Hurum of the late Nawab of *Surat*, at the time of his Death.

NAMES.	Rs. a. p.	REMARKS.
1. Moorad Baee, aged about 85 years	6 – –	These persons were purchased in their infancy by Nawab Hafeezoodein, commonly called Kanmooldowlah, the grandfather of the late Nawab. They reside in the place called the old Durbar, and are maintained by Meer Jaffer Ally, the husband of Bukhtiarool Nissa Begum, daughter of the late Nawab.
2. Achanuck Baee, aged about 90 years	6 – –	
3. Anoop Baee, aged about 86 years	6 – –	
4. Sooruj Baee, aged about 98 years	6 – –	
5. Gotta Baee, aged about 70 years	6 – –	
6. Soojan Baee, aged about 80 years	6 – –	These persons were purchased by Nawab Meezamoodein, in their infancy, or when very young. They reside in the old Durbar and are maintained by Meer Jaffer Ally Khan.
7. Rishun Baee, aged about 60 years	6 – –	
8. Umrut Baee, aged about 60 years	6 – –	
9. Gohur Baee, aged about 60 years	6 – –	These persons were purchased by Nawab Nusseeroodein Khan, in their infancy; they reside in the old Durbar, and are maintained by Meef Jaffer Allee Khan.
10. Kishna Baee, aged about 40 years	6 – –	
11. Gooman Baee, aged about 70 years	6 – –	
12. Wuzeer Baee, aged about 55 years	6 – –	
13. Mohun Baee, aged about 50 years	6 – –	
14. Seelvo Baee, aged about 65 years	6 – –	
15. Rung Baee, aged about 75 years	6 – –	
16. Khooshall Baee, aged about 50 years	6 – –	These persons were purchased by Nawab Nusseeroodein Khan; they reside in the Nawab's Palace, called the Old Mehl, with Shahzadi Begum, by whom they were maintained till her death; since then they have been in charge of Seedee Romee. They deny that they are subject to the orders or control of Bukhtiarool Nissa Begum, the late Nawab's daughter, and refuse to receive any maintenance from Meer Jaffer Alle.
17. Koondun Baee, aged about 60 years	6 – –	
18. Lachia Baee, aged about 40 years	6 – –	
19. Soojeet Baee, aged about 35 years	6 – –	
20. Rajoo Baee, aged about 50 years	6 – –	
21. Araesh Baee, aged about 40 years	6 – –	
22. Gota Baee, aged about 35 years	6 – –	
23. Banul Baee, aged about 50 years	6 – –	
24. Soojan Baee, aged about 80 years	6 – –	
25. Nugeena Baee, aged about 40 years	6 – –	
26. Ajan Baee, aged about 40 years	6 – –	
27. Viruj Baee, no idea of her age	6 – –	
28. Faij Baee, aged about 70 years	6 – –	
29. Gool Bahr, aged about 100 years	6 – –	
30. Newrung Baee, aged about 50 years	6 – –	
31. Joorah Baee, aged about 60 years	6 – –	
32. Dilpusund, aged about 60 years	6 – –	
33. Goolzian Baee, aged about 50 years	6 – –	These persons were purchased by Nawab Nusseeroodein Khan, in their infancy. They were subsequently attached to Neejibool Nissa Begum, the Nawab's daughter, who died after her marriage with Meer Akbur Alle Khan, and now reside with Ajjeb Bahr, the Hurum of the late Nawab, in the apartments appropriated to the use of his daughter. They are maintained by Meer Jaffer Allee Khan.
34. Suda Baee, aged about 50 years	6 – –	
35. Luleeta Baee, aged about 29 years	– – –	These persons were purchased by the late Nawab Afzooloodien Khan, and made over to his daughter Bukhtiarool Nissa Begum, with whom they now reside. They are not considered entitled to a maintenance, independent of their mistress.
36. Sarus Baee, aged about 35 years	– – –	
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LIST of FEMALE SLAVES in the Zenana of the late Nawab of *Surat*, at the time of his Death.

NAMES.	Rs.	a.	p.	REMARKS.
1. Booah Humesse Bahr, aged about 100 years.	5	–	–	These persons were purchased in their infancy, or when very young, by Hafeezoodein, commonly called Kaimool Dawlah. They reside in the Old Durbar, and are maintained by Meer Jaffer Allee, the son-in-law of the late Nawab, with the exception of No. 1, who resides in the old Mehl, with Shahzadi Begum, by whom she was maintained till the death of the latter. She is now kept at the expense of Seedee Roomee.
2. Bel Kulee, aged about 80 years	5	–	–	
3. Gool Chimun, aged about 100 years	5	–	–	
4. Gool Bahr, aged about 100 years	5	–	–	
5. Khoosh Undam, aged about 75 years	5	–	–	
6. Nurgesh Baee, aged about 85 years	5	–	–	
7. Nen Kulah, aged about 75 years	5	–	–	
8. Gool Chimun, aged about 70 years	5	–	–	
9. Nen Kulah, aged about 65 years	5	–	–	
10. Noor, aged about 55 years	5	–	–	
11. Sulamee Boo, aged about 60 years	5	–	–	
12. Zeenool Huboos, aged about 58 years	5	–	–	
13. Hoorool Oomer, aged about 60 years	5	–	–	These persons were purchased by Nawab Neezamooldeen Khan. They reside in the old Durbar, and are maintained by Jaffer Allee.
14. Huleeyah, aged about 60 years	5	–	–	
15. Goolab, aged about years	5	–	–	
16. Dowlut Ufza, aged about 60 years	5	–	–	
17. Sulama, aged about 70 years	5	–	–	
18. Doogoo, aged about 55 years	5	–	–	
19. Booah Goolzar, aged about 80 years	5	–	–	These persons were purchased by Nawab Nusserooldien. They reside in the old Mehl, under the protection of Shahzadi Begum, by whom they were maintained till her death; since then they are in charge of Seedee Roomi. They refuse to acknowledge that they are subject to the control of Bukhtiarool Nissa Begum, the daughter of the late Nawab, and will not receive any maintenance from her husband, Meer Jaffer Allee.
20. Booah Goolbudun, aged about 80 years	5	–	–	
21. Booah Reynee, aged about 60 years	5	–	–	
22. Booah Sunjida, aged about 70 years	5	–	–	
23. Booah Sulz Bahr, aged about 50 years	5	–	–	
24. Booah Moorzana, aged about 60 years	5	–	–	
25. Booah Mehe Ungez, aged about 60 years	5	–	–	
26. Booah Kureema, aged about 60 years	5	–	–	
27. Booah Goonchi Gool, aged about 60 years.	5	–	–	
28. Boo Huneefa, aged about 60 years	5	–	–	
29. Boo Huss Mookh, aged about 80 years	5	–	–	
30. Heere Boo, aged about 40 years	5	–	–	
31. Joommah Bahee, aged about 35 years	5	–	–	These persons were purchased by Nawab Nusseeroodein, with the exception of No. 35 and 36; they are in attendance on Bukhtiarool Nissa Begum, the daughter of the Nawab, but considered entitled to a pension as not being her personal slaves.
32. Goolshumboo, aged about 50 years	5	–	–	
33. Furhuit Ufza, aged about 40 years	5	–	–	
34. Roshun Bahr, aged about 50 years	5	–	–	
35. Roshun, aged about 50 years	5	–	–	
36. Sukeena, aged about 60 years	5	–	–	
37. Gool Beedun, aged about 25 years	–	–	–	These persons are in the service of Badshah Begum, and maintained by her. They were purchased by that lady, or some of her relations, for most part subsequent to her marriage with the Nawab. No. 37, 40, and 43, formed part of her dowry, not entitled to a separate maintenance.
38. Gool Churum, aged about 20 years	–	–	–	
39. Ya Sumun, aged about 12 years	–	–	–	
40. Belkulee, aged about 40 years	–	–	–	
41. Jumeeyet, aged about 14 years	–	–	–	
42. Gool Bahr, aged about 30 years	–	–	–	
43. Seeda Bahr, aged about 25 years	–	–	–	
44. Jasun Baee, aged about 25 years	–	–	–	These persons were purchased by the late Nawab, by whom they were made over to his daughter, Bukhtiarool Nissa Begum, by whom they are maintained; they are not considered as entitled to a maintenance independent of their mistress.
45. Nen Zara Bahee, aged about 30 years	–	–	–	
46. Naro Bahr, aged about 35 years	–	–	–	
47. Bahr Ufza, aged about 40 years	–	–	–	
48. Ronuck Ufza, aged about 50 years	–	–	–	
49. Roshun Ufza, aged about 35 years	–	–	–	
50. Dil Soly, aged about 35 years	–	–	–	
51. Chuter Baee, aged about 32 years	–	–	–	
52. Non Bahr, aged about 32 years	–	–	–	These persons were given to the late Nawab as children, and are in the service of Bukhtiarool Nissa Begum, not entitled to a separate maintenance.
53. Kudun Khyr, aged about 40 years	–	–	–	
54. Rung Binee, aged about 25 years	–	–	–	
55. Khoosh Nujur, aged about 40 years	5	–	–	These persons were purchased by the late Nawab in their infancy, and given by him to his daughter, Nuzebool Nissa Begum, in whose apartments they reside in charge of his Hurum, Ajul Bahr; they are maintained by Meer Jaffer Allee.
56. Bahrej, aged about 40 years	5	–	–	
57. Khoosh Budun, aged about 30 years	5	–	–	
58. Booah Hussina, aged about 60 years	5	–	–	
59. Booah Goolzhar, aged about 55 years	5	–	–	These persons formed part of the dowry of the daughter of Chulebi on her marriage with the late Nawab; since the death of that lady they have resided in the house which belonged to her father, and are considered entitled to pension.
60. Booah Marium, aged about 57 years	5	–	–	
61. Booah Khoosh Kudum, aged about 70 years.	5	–	–	
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LIST of FEMALE SERVANTS in the Service of the Nawab of *Surat* at the time of his Death, considered entitled to Pensions from Government.

NAMES.	Rs. a. p.	REMARKS.
1. Zumit Boo, aged about 50 years, has been in attendance on Bukhtiarool Nissa Begum for a period of 24 years.	5 – –	– – This person is said to have received two rupees per mensem and her food; entitled to a pension on account of length of service.
2. Aessa Beebi, aged about 90 years, has been employed about 50 since the time of Meer Nusseeroodein.	5 – –	– – This person was employed in washing silk dresses, and received five rupees per mensem; entitled to pension on account of length of service.
3. 1. Fatina, 16 years old – – –	2 – –	These persons are the children of Dai Huyal, wet nurse to Bukhtiarool Nisa Begum; they have received 10 rupees per mensem, and 12 annas for pan, sooparee, and food and clothes since the death of their mother, therefore recommended for pensions.
2. Aessa, 15 ditto – – – –	2 – –	
3. Mariam, 10 ditto – – – –	2 – –	
4. Zenub, 8 ditto – – – –	2 – –	
5. Salton Boo, 6 ditto – – –	2 – –	
4. Dai Wuzeer; she assisted to suckle Bukhtiarool Nissa Begum.	10 – –	– – This person did not appear on account of being sick, but she is said to have received 10 rupees per mensem as wages, 12 annas for pann, sooparee, and food and clothes from the Nawab, therefore recommended for a pension.
5. Kuremboo, aged about 90 years, has been in the service about 52 years; was first employed as a wet nurse to Basee Veejia.	4 – –	– – This person received a pension of two rupees per mensem, and her food.
6. Umunboo, aged about 70 years, has been very long in the service.	4 – –	– – This woman was also pensioned at 1 ½ rupees per month, and her food and clothes.
7. Bukshi Begum, aged about 50 years; many years in service.	3 – –	– – Pensioned at one rupee in cash; one maund kichree and one seer ghee per month.
8. Beebe Jaun, aged 50 years; was employed as wet nurse to Neejeebool Nissa Begum; period of service 27 years.	7 – –	– – Pensioned on seven rupees per mensem and her food; in attendance on Booah Agieb Bahr.
9. Baee Ameena, aged about 60 years; same as above.	7 – –	– – Ditto – – – ditto.
10. Baee Salam, aged about 60 years, was entertained to amuse Nujeebool Nissa Begum when a child; service 27 years.	4 – –	Pensioned on four rupees per mensem.
11. Fatma Beebee, was employed as a teacher; service 25 years.	10 – –	– – She received six rupees per mensem, and her food and clothes.
12. Baee Manuck Hulal Khore, aged about 45 years; many years in service.	2 – –	Pensioned on two rupees per mensem.
13. Dhumee Hulal Khore, formerly in the service of Chulebi Sahib.	1 – –	– – This person did not appear in person, but the truth of his statement and of her being alive vouched for by Sudee Moozuffer; she received a pension of one rupee per mensem from the late Nawab.
14. Baee Goolal, the wife of one of the slaves of Kaemool Dowlah.	2 – –	– – This person received two rupees per mensem from the late Nawab and his predecessors for many years as a pension; she resides in the old durbar with the female slaves of the time of Kaemool Dowlah.
Rs.	74 – –	

LIST of METAS, &c. in the Service of the late Nawab of *Surat* at the time of his Death.

NAMES.	——	REMARKS.
	Rs. a. p.	
1. Atmaram Keerparam Dawan. The father of this person was dewan at the time of the cession of Surat by Nawab Nusseeroodien, A. D. 1800, at which time he obtained a hereditary grant of 300 rupees per mensem from Government on account of the part he took in the negotiations with the Nawab that were carried on by the Honourable J. Duncan, Governor of Bombay, in person, and which is now enjoyed by his son.	- - -	- - He received 50 rupees personal pay, 15 rupees for servants and forage for cattle. Being in good circumstances is not considered entitled to any pension.
2. Mahomed Allee Beg, aged about 50 years, has been in the service of the Nawab about 22 years; first as a horseman, afterwards as a jemadar in personal attendance on the Nawab.	- - -	- - About six years ago this person was appointed kharbaree, or principal manager of all the Nawab's pecuniary affairs; since then he received a personal allowance of 201 rupees per mensem, besides his expenses of every kind. He is said to have amassed considerable wealth in the Nawab's service, and is not therefore considered entitled to any pension.
3. Futch Mahomed Jemadar, aged about 32 years, in personal attendance on the Nawab. Has been in his service altogether about 22 years.	20 - -	- - Since he was advanced to the situation of jemadar, he received 68 rupees per month as a personal allowance, *Rs.* 38. 12. on account of servants, besides forage for horses and cattle. On account of his long period of service, he is recommended for a pension of 20 rupees per mensem.
4. Umbaram Mahdowram, aged about 70 years; has been in the service of the Nawab about 52 years; his father was also in his service.	20 - -	- - He received a personal allowance of 20 rupees per mensem, and about 125 rupees per annum arising from sookhree, or fees of half an anna in the rupee on all purchases made on account of the Nawab's household, paid to him by the tradesmen. The expenses attending deaths and weddings in his family were also defrayed by the Nawab. Recommended for a pension on account of length of service.
5. Mohunlal Ochhuram. His father was formerly in the service of the Nawab for a period of 40 years; he has been so for 22 years.	20 - -	- - This person received a personal allowance of 20 rupees per mensem, and about 100 rupees per annum arising from a fee of one rupee paid by the farmers of the Nawab's lands on the occasion of receiving their leases. Recommended for a pension on account of the length of his own and his father's service.
6. Keerparam Gokuldass, aged about 35 years, has been in the service of the Nawab since he was seven years old. His father was also employed about 24 years in the modikhana, or store-room.	15 - -	- - He received a personal salary of seven rupees per mensem, and about 250 rupees per annum arising from sookree, or a fee of half an anna in the rupee on all purchases for the modikhana, paid by the tradesmen, from whom he also received lawazim or perquisites, at the Dewalee, about rupees per annum. The expenses attending deaths and marriages in his family were also defrayed by the Nawab.
7. Hureedass Tooljaram, aged about 43 years. His ancestors for four generations were in the service of the Nawabs. He has been employed for 17 years.	5 - -	- - He received five rupees per mensem. The Nawab also defrayed the expenses of deaths and marriages in his family.
8. Atmaram Ootumram, aged about 50 years, has been in the service of the Nawab for 22 years. His forefathers were also employed by the Nawab in the modikhana.	5 - -	- - His pay was five rupees per mensem. He also occasionally received fees and perquisites.
9. Trumbucklal Shunkertal, aged about 66 years, has been in the service of the Nawab about 23 years.	5 - -	- - The salary of this person was five rupees per mensem. He attended on Hurum Booah Dowlut Bahr.
Rs.	90 - -	

LIST of SEPOYS in the Service of the late Nawab of *Surat* at the time of his Death, entitled to Pensions from Government on account of Long Service.

NAMES.	Rs. a. p.	REMARKS.
1. Mahomed Sheriff, aged about 40 years; period of service, 20 years; pay, 4 rupees per mensem.	3 – –	- - These persons are all recommended to be pensioned, on account of length of services; they will also be employed in protecting the women's apartments at the palace, and on such other duties as they may be required and capable of performing.
2. Hajee Khan Mahomed Khan, aged about years; service, 20 years; pay, 5 rupees per mensem.	3 – –	
4. Maojee Lala, aged about 50 years; service, years; pay, 6 rupees per mensem.	3 – –	
5. Mahomed Huyat Khan, aged about 64 years; service, 34 years; pay 4 rupees per mensem.	3 – –	
6. Sheik Noor Vulud Ghasee Jemadar, aged about 60 years; pay, 5½ rupees per mensem.	3 – –	
7. Mahomed Fazel Vulud Mahomed Kazim, aged about 45 years; service, 25 years; pay, 6 rupees per mensem.	3 – –	
8. Hurreedass Kukhoobaee, aged about 73 years; service, 32 years; pay, 3 rupees per mensem.	3 – –	
9. Mahomed Alzud Noor Mahomed, aged about 70 years; service, 38 years; pay, 4 rupees per mensem.	3 – –	
10. Moolek Johugur Muluk Hassum, aged about 51 years; service, 33 years; pay, 5 rupees per mensem.	3 – –	
11. Mohkunsing Bharsing, aged about 60 years; service, 27 years; pay, 4 rupees per mensem.	3 – –	
12. Sooltan Khan Vuzeer Khan, aged about 60 years; service, 30 years; pay, 4 rupees per mensem.	3 – –	
13. Peer Khan Bahadoor Khan, aged about 43 years, same as above.	3 – –	
14. Burkeitshah Hujrutshah, aged about 65 years; service, 21 years; pay, 5 rupees per mensem.	3 – –	
15. Mahomed Hoossein Ubdool Lutif, aged about 53 years; service, 21 years; pay, 4 rupees per mensem.	3 – –	
16. Goolam Mahomed Shah Mahomed, aged about 40 years; service, 20 years; pay, 4 rupees per mensem.	3 – –	
17. Sheik Chand Sheik Jumal, aged about 62 years; service, 30 years; pay, 5 rupees per mensem.	3 – –	
18. Abdool Kadur Mahomed Ameer, aged about 50 years; service, 20 years; pay, 6 rupees per mensem.	3 – –	
19. Sheik Ameer Sheik Inaet, aged about 50 years; service, 30 years; pay, 5 rupees per mensem.	3 – –	
20. Sheik Ismael Mahomed Hoossein, aged about 23 years, has been in service since his infancy; pay, 4 rupees per mensem.	3 – –	
21. Hajee Khan Moomrej Khan, aged about 60 years; service, 37 years; pay, 4 rupees per mensem.	3 – –	
22. Jumal Mahomed Sheik Mahomed, aged about 45 years; service, 30 years; pay, 4 rupees per mensem.	3 – –	
23. Naeque Kussunjee Oomersing, aged about 45 years; service, 25 years; pay, 4 rupees per mensem.	3 – –	
24. Abdool Rehmon Abdool Kureem, aged about 62 years; service, 35 years; pay, 6 rupees per mensem.	3 – –	

List of Sepoys in the Service of the late Nawab of *Snrat*, &c.—*continued.*

NAMES.	Rs. a. p.	REMARKS.
25. Surdar Sheik Chand, aged about 55 years; service, 30 years; pay, 4 rupees per mensem.	3 – –	These persons are all recommended to be pensioned, on account of length of services; they will also be employed in protecting the women's apartments at the palace, and on such other duties as they may be required and capable of performing.
26. Sheik Abeeboola Sheikh Neamut Oolla, aged about 53 years, same as above.	3 – –	
27. Moolek Mustoo Futch Mahomed, aged about 50 years; service, 30 years; pay, 4 ½ rupees per mensem.	3 – –	
28. Rehmut Khan Oomer Khan, aged about 50 years; service, 30 years; pay, 3 rupees per mensem.	3 – –	
29. Alum Khan Ruhim Khan, aged about 47 years; service, 30 years; pay, 3 rupees per mensem.	3 – –	
30. Mulek Neesroola Mulek Rohmutoolla, aged about 50 years; service, 20 years; pay, 1 ½ rupee per mensem.	3 – –	
31. Govind Sing Furushram, aged about 60 years; service, 20 years; pay, 5 rupees per mensem.	3 – –	
32. Moolia Maojee, aged about 62 years; service, 45 years; pay, 4 rupees per mensem.	3 – –	
Rs.	96 – –	

LIST of Household Servants on the Establishment of the Nawab of *Surat* at the time of his Death entitled to Pensions from Government on account of Length of Service.

NAMES.	Rs. a. p.	REMARKS.
1. Munna Dina, aged about 65 years; service, 32 years; pay, 6 ½ rupees per mensem.	4 – –	These persons were all employed as hamals, and are recommended for pensions on account of length of service.
2. Ulbee Bukshi, aged about 45 years; service, 30 years; pay, 5 ½ rupees per mensem.	4 – –	
3. Bheeklo Gheesso, aged about 80 years; service, 50 years; pay, 5 ½ rupees per mensem.	4 – –	
4. Munna Khooshal, aged about 50 years; service, 30 years; pay, 5 ½ rupees per mensem.	4 – –	
5. Poorun Dina, aged about 42 years; service, 22 years; pay, 5 ½ rupees per mensem.	3 – –	
6. Khurgee Khooshal, aged about 55 years; service, 20 years; pay, 5 ½ rupees per mensem.	3 – –	
7. Oosree Jooda, aged about 40 years; service, 25 years; pay, 5 ½ rupees per mensem.	3 – –	These persons were employed as tailors, recommended for a pension on account of length of service.
8. Lar Mahomed, aged about 40 years; service, 25 years; pay, 5 ½ rupees yer mensem.	3 – –	
9. Lala Gungareem, aged about 47 years; service 21 years; pay, 7 rupees per mensem.	3 – –	
10. Pursotum Bhowan; absent; service 35 years; pay, 6 rupees per mensem.	3 – –	
11. Gopall Khooshal, aged about 40 years; Bheestee service, 23 years; pay, 13 rupees per mensem.	3 – –	This man will not have to keep a bullock; his pension is therefore fixed at 3 rupees per mensem.

List of Household Servants on the Establishment of the late Nawab of *Surat*, &c.—*continued.*

NAMES.	Rs. a. p.	REMARKS.
12. Hurruckchund Meetha, aged about 80 years; Hulal Khore, pensioned by the Nawab, on account of length of service; pension, *Rs.* 2. 5. 6. per mensem.	2 8 –	-- These men, having been pensioned by the Nawab, are considered entitled to the amount granted till their death.
13. Gokul Gurol, aged about 60 years; same as above.	2 8 –	
14. Mahomed Aruf a Khidmutgar; service, 35 years; pay, 5 rupees per mensem.	5 – –	Recommended for a pension for length of service.
15. Sheikh Ibrahim; service, 40 years; pay, 5 rupees per mensem.	5 – –	
16. Seedee Hubeeb - - - - -	2 8 –	-- These persons are sons of Seedee Hajee, and have been brought up with the women in the old Durbar, being young, and without the mesns of living; they are recommended for a pension of *Rs.* 2. 8. each.
17. Seedee Mahomed - - - - -	2 8 –	
18. Nurotum Kassinath, aged about 40 years; employed as a purubia, or supplying water to the Hindoos, on the establishment of the Nawab, has been in the service 22 years.	3 – –	-- The wages of this person were 3 rupees per mensem, which are recommended to be continued to him as a pension on account of length of service.
Rs.	60 – –	

LIST of Relations, &c., of *Meerza Abdoola Beg*, late Karbari of his Excellency the late Nawab of *Surat*, pensioned by him on the Death of the former.

NAMES.	Rs. a. p.	REMARKS.
1. Goolekha Khamun, aged about 30 years; wife of Meerza Abdoola Beg; she was married about 10 or 12 years ago at Surat.	10 – –	-- Pensioned by the late Nawab at 10 rupees per mensem on the death of her husband.
2. Kudree Khatum, aged about 80 years; mother of Meerza Abdoola Beg.	5 – –	-- The husband of this person was employed in the service of Mr. Marrion, Collector of Surat, as a peon; she received a pension of 5 rupees from the Nawab on the death of her son.
3. Bhooree Khamun, aged about 50 years; sister of Meerza Abdoola Beg.	3 – –	-- She received a monthly allowance of 3 rupees from the late Nawab on the same occasion.
4. Sukeena Bee, aged about 30 years; a hurum of Merza Abdoola Beg; she was brought up by the late Nawab, and given to the former.	4 – –	Allowed a monthly pension of 4 rupees.
5. Khooshal Baee, aged about 26 years; a female slave of Meerza Abdoola Beg; purchased in her infancy from a singing woman, named Dulloo, for 100 rupees.	3 – –	Received a monthly allowance of 3 rupees.
6. Meerza Yaseen Beg, aged about 19 years; son of Meerza Abdoola Beg.	3 – –	Received 3 rupees per mensem.
7. Meerza Khyroo, aged about 11 years; son of Meerza Abdoola Beg, by a hurum, who died about eight months ago.	4 – –	-- The mother of this lady previously received 4 rupees per month. Recommended for a pension till the boy is 16, and the girl married.
8. Baee Rajkooner Baee, aged 21 years; hurum of Merza Abdoola Beg; purchased at Bombay, from whom unknown.	3 – –	Received 3 rupees pet mensem.
9. Gool Koner, aged about 25 years: hurum of the late Meerza Abdoola Beg, by whom she has a son, who lives with her.	4 – –	-- She received 4 rupees per mensem. For an account of the circumstances attending the death of Abdoola Beg, Government is referred to my predecessor's Report on this subject, dated 28 October 1839 (No. 59), and previous correspondence.
Rs.	39 – –	

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

NAWÁB OF SURAT TREATY BILL.

DOCUMENTS PRODUCED BY MR. ROLT
ON BEHALF OF THE PETITIONERS.

PART I.

Ordered, by The House of Commons, *to be Printed,*
9 *June* 1856.

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NAWAB OF SURAT TREATY BILL.

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NAWAB OF SURAT TREATY BILL.

3 May 1856.

Sabbati, 3° die Maii, 1856.

DOCUMENTS produced by Mr. *Rolt* on behalf of the PETITIONERS.

EXTRACT Political Letter from *Bombay*; dated 22 August (No. 32) 1842.

22 August 1842. Surat.

1. WE deeply regret to state, for the information of your Honourable Court, that we have received a report from Mr. Richardson, the acting agent for the Governor at Surat, that his Excellency Meer Ufzool-ood-deen Khan Kumrood Dowleh Uckmut Jung Bhadoor, Nawab of Surat, died of cholera at that place, on the 8th instant, at the age of sixty-one years and eight months, without having any male issue, whereby we believe the title of Nawab has become extinct.

2. On the receipt of this intelligence, we deemed it proper to direct Mr. Elliot, the agent to the Governor at Surat, who had a short time previously obtained leave of absence on private affairs, to return to Surat, and resume charge of the office of agent to the Governor at that station.

3. We have at the same time directed Mr. Elliot to report whether his Excellency has left any heirs, and, if so, who are they, and in what degree, and whether by the demise of the late Nawab any change arises in the pre-existing relations between the British Government and his Excellency's family, and, generally, what arrangements are necessary consequent on the Nawab's demise.

4. We shall hereafter have the honour to submit to your Honourable Court copy of Mr. Elliot's reply to this reference, accompanied by a report of the measures which may be adopted thereon. In the meantime we have caused the usual letters of condolence to be addressed to the family on the occasion of the late Nawab's death.

5. For the convenience of reference, we beg to annex, as an enclosure to our present despatch, copy of the Treaty entered into with the British Government, in May 1800, by Naseer-ood-deen Khan, the father of the late Nawab of Surat. From the 4th article of this Treaty, your Honourable Court will observe, that the late Nawab was entitled to receive the sum of one lack of rupees annually, payable in four quarterly instalments, and in addition thereto one-fifth of the remaining revenues of Surat and its dependencies, which we believe has averaged about 60,000 rupees per annum. In the absence of the report called for from Mr. Elliot, we are unable to state whether these sums now revert to the British Government, or whether, under the provisions of the Treaty to which we have called the attention of your Honourable Court, they are to be continued to any member or members of the late Nawab's family.

6. Our President has received a letter from Ameer-oo-Nissee-Begum, the daughter of the late Nawab, announcing her father's death. This lady married, some years ago, Meer Jaffer Ally, the son of Meer Sarafraz Ally, of Baroda, who has been brought to the notice of your Honourable Court on former occasions, from having incurred the displeasure of his Highness the Guicowar, and from having in consequence been ill treated by that prince.

The late Nawab possessed considerable property, which will of course descend to his family in the proportions awarded by the Mahomedan law.

From *G. L. Elliot*, Esq., Agent for the Honourable the Governor at *Surat*, to *L. R. Reid*, Esq., Chief Secretary to Government, *Bombay*; dated 28th August 1842.

Sir,

IN reference to your letter of the 16th and mine of the 22d instant, and in obedience to the instructions of the Honourable the Governor in Council, conveyed

Dated 28 August 1842.

3 May 1856.

conveyed in the 4th para. of your communication, I do myself the honour to report the result of the investigation which I have instituted into the claims of different persons as heir to the late Nawab, and into the validity, according to the Mahomedan law, of their several pretensions to inherit the allowances enjoyed by his Excellency.

2. Dulum Begum, or Badshaw Begum, is one of his widows, and about 41 years of age; she is daughter to the great grandson of the late Nawab of Broach, and was married to his Excellency in the month of March 1816, an event which was communicated by the chief of Surat to Government in his letter of April the 29th, 1816, acknowledged by Mr. Chief Secretary Warden, on the 9th of the succeeding May.

This lady is entitled to one anna in each rupee.

3. His Excellency has left another widow, Memmanee, alias Umeer-ool-Neesa Begum, respecting whom I have to speak more in detail, as there is some discordance in the evidence relating to her early history, on which her claim, and that of her daughter, to a participation in her late husband's allowances must very materially depend. In presence of the late Nawab's managers, I examined several persons, whom I suppose to be well acquainted with the domestic transactions of the family, and from their evidence it appeared that this lady, when very young, fled by night from her home and relations, for reasons which were not stated, and was accidentally met by a peon in the service of the late Nawab's father, who seized and delivered her into the hands of an eunuch, named Sohel; that, on the following day, this person brought her into the presence of the Nawaub, who placed her on his son's establishment as attendant on one of his concubines; that the Nawab lately deceased eventually married her, but not until she had become the mother of three children, of whom one daughter is the sole survivor; her name will appear in the course of this statement, and she is the only direct heir left by his Excellency. His marriage with this Begum, and with a dancing girl named Dulloo, were together celebrated on the 26th Mohurum Hijree 1241, corresponding with 11th of September 1825.

4. Such is the tale of these witnesses (Goolam, on the establishment) which, if to be depended upon, would decidedly militate against the Begum's claim. But thinking a more minute investigation highly necessary regarding a person who has always enjoyed the rank and shared the respect due to the principal lady on the establishment (the other widow, Doolum Begum having been long separated from him), I could not rest satisfied without her own direct statement: with her sanction, therefore, I repaired to the palace, and with every deference, demanded by her retired habits and peculiar circumstances, I obtained from her own lips the following history of her early life: she belonged to the Rajpoot caste, and resided at Bownuggur: when about the age of 12 or 13, a stranger came there, and purchased her; for what sum she knows not; he conveyed her to the town of Randier, and afterwards to the residence of the old Nawab, father of his late Excellency. The latter informed his mother, that a young girl had been to the palace whom he wished to live with him; his proposal having been acceded to by her, and his father, Nussooroodeen Khan, she was given into his keeping; she recollects having heard that the person who brought her, in consideration of the purchase, received 200 rupees, and a pair of shawls. Three children were the offspring of this connexion, of whom one alone is now alive, namely, a daughter, Bukteearool Neesa Begum; after the Bismulla of this child (four years four months and four days subsequent to its birth), she was married to the Nawab, who passed to her a deed of emancipation.

5. In the Kazee's registry of marriages, deposited in the superintendent's office, the following entry is recorded: "That the nuptials were celebrated between Ufzooloodeen Khan Quotboot Dowlah Hushmut Jung Saheb, son of the Nawab Nusseeroodeen Khan Sahib, son of the Nawab, Meer Hufeezooddeen Sahib, and Moosummatch Wuzeerool Neesa Ulteeka, (emancipated) by the Nawab Wakeel, on the part of the woman Meer Essa, and witness Meer Humroodeen, son of Meer Sumroodeen and Hafiez Hamed Pulud Mahomed Hossein, for a marriage present: 750 rupees and six precious ornaments, are given to her. Present Shaik Zoobar and Moolvie Khoob Sahib."

6. The

3 May 1856.

6. The expression, "She was emancipated by the Nawab," is of the first importance. Its having taken place cannot be doubted, as it is unequivocally stated in an authentic register, and the word itself "Utteekee" not only implies, but clearly proves previous slavery, emancipation being an act of grace, which cannot be extended to any but a slave. The record is therefore, in my opinion, a full corroboration of the truth and credibility of her statement. The difference in the name which is inserted by the kazee as Wuzeerool Neeva, instead of Wumeerool Neesa, Begum, must, I feel convinced, have arisen solely from mistake, and does not at all invalidate the correctness of her story, as the native agent, Ardehseer Dunjeeshah, distinctly testifies that he was present at the abovementioned marriage of the identical woman.

7. No reason has therefore arisen for doubting the veracity of the Begum, while much suspicion attaches to the evidence of those who have related so improbable a story, and endeavoured to set aside her claims, and to whom I adverted in para. 3d. It is true they are slaves on the establishment, but they are people of the lowest extraction, and have been at variance with Memmannee, who says she has many enemies in the zenana, interested in disproving her being a purchased slave, as the overthrow of her rights would greatly benefit them, who are quite capable of suborning such persons, and bringing them forward as witnesses to falsehood.

8. Presuming, then, that the purchase of the Begum as a slave, and her consequent right to enjoy a share of her husband's allowances, is established, she is entitled to one anna in the rupee, the same as the other widow, Doolum Begum.

9. Bukhteearool Neesa Begum, the daughter of his late Excellency, to whom allusion is made in paras. 3 and 4, is about 21 years of age, and was born, as already stated, about four years previously to the marriage of her father and mother, Memmanee. She is married to Meer Jaffur Alli, son of Meer Surfraz Alli.

10. The satisfactory testimony given to her mother's having been the purchased slave of the Nawab, entitles this lady, according to the Mahomedan law, to inherit from her father's allowances at the rate of eight annas in a rupee; but her children may not during her life enjoy any share of the provision.

11. She has, however, dared to advance yet more lofty pretensions, having been persuaded that her husband is to inherit the titles and dignities of the late Nawab. No sooner was his demise reported, than her father-in-law, Meer Surfraz Alli, hastened to Surat, and is now residing in the palace with his son, in order to watch over the interests of his son and daughter-in-law. By his influence, she has, I understand, been induced to address the Honourable the Governor on the subject of her husband's pretensions, in a letter that was forwarded to Mr. Morris, secretary in the Persian Department, with Mr. Richardson's communication of the 19th instant.

12. Meer Jaffer Alli is not, however, entitled by the Mahomedan law to any share even of the Nawab's allowances; and it is difficult to understand on what arguments he could possibly found his absurd and ambitious claims to the heritage of his title.

13. Two concubines of the late Nawab, Ujub Bahar, and Rung Bahar, are living in the establishment, but are entitled to no provision; they are, however, by the Mahomedan law, to be considered free from the date of his Excellency's decease.

14. Jeegeer Begum, who was married to the late Nawab's brother, Meer Kehroodeen Khan, is, notwithstanding the connexion, excluded from any share of the money by the fact of her husband having died during the life of his father and mother.

15. Shah Zadee Begum, daughter of the above mentioned Meer Kheroodeen Khan, and niece to the Nawab, is about 30 years old; she was the offspring of a concubine, and was betrothed by her uncle to Meer Moheemoodeen Khan, the present buckshee.

 16. This

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16. This lady, though so nearly related, is by the Mahomedan law prohibited from any share in the inheritance, her claim being superseded by those of Meer Moheenoodeen Khan and Meer Kumroodeen Khan, male descendants of the uncle of the late Nawab's grandfather, who are yet alive.

17. The former of the above-mentioned persons, the present buckshee, is grandson to Meer Nuzmoodeen Khan: the degree of relationship in which he stands to the late Nawab has been already specified. He is descended from the elder branch of the family; and the conviction of Government that this circumstance entitled him to their consideration, may be deduced from the terms of a sunud, to which I would solicit the attention of the Honourable the Governor in Council, and which was granted to Nuzmoodeen Khan Bhadoor Sufdurool Moolk: its date is the 22d of June 1800, and it bears the signature of the Governor, Mr. Duncan, and the seal of the Honourable Company; from this document, of which a copy was transmitted to the Lieutenant-governor of this place, I extract the following declaration of the sentiments of Government: "It has become expedient to make a suitable provision for the said Nujmoodeen Khan Bhadoor and his family, who are near relatives to and descendants from the same paternal stock as the Nawabs of Surat."

18. The above-mentioned Meer Moheemoodeen Khan is entitled to one-eighth and a half, or three annas in the rupee.

19. Meer Kumroodeen Khan, already named, as the other descendant from the uncle of the Nawab's grandfather, is in like manner entitled to enjoy one-eighth and a half, or three annas in the rupee.

He has, by a petition to Mr. Richardson, requested that his allowance may be defrayed from the Nawab's private property.

20. Should the several assignments now proposed, being the amount to which the several candidates appear to have a legal right, be approved by the Government, I respectfully suggest that the different incomes, as specified below, may be separately paid to the claimants directly from the Government treasury.

ASSIGNMENT of 150,000 rupees per annum, to be shared by the Nawab's heirs, and received from the Government treasury:

NAMES.	The Number of Annas in a Rupee each Person is entitled to receive by Mahomedan Law.	Per Month.			Per Year.		
		Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
Doolun Begum - - -	- - 1 - -	781	4	-	9,375	-	-
Memmanee - - - -	- - 1 - -	781	4	-	9,375	-	-
Bukhteearool Neesa Begum -	- - 8 - -	6,250	-	-	75,000	-	-
Meer Moheemoodeen Khan -	- - 3 - -	2,343	12	-	28,125	-	-
Meer Kamroodeen Khan - -	- - 3 - -	2,343	12	-	28,125	-	-
	- - 1 - -	12,500	-	-	150,000	-	

21. Although the four persons enumerated in the 13th, 14th, and 15th paras. are not, as I have stated, empowered by law to inherit any share of the Nawab's allowances, yet I would observe with deference, that as they were supported by, and solely dependent on him, justice, and perhaps respect for his memory, appear to require that we should make such provision for their support as the Government may think it expedient to assign them.

22. In reply to the 6th paragraph of your letter, requesting to know the effect of this event upon our mutual relationship, I have the honour to state, that, in my opinion, the question appears to be settled beyond the possibility of a doubt. By the death of his Excellency without a male descendant to his titles and immunities, the whole political connexion that existed between this authority and the British Government is necessarily dissolved, nor can any part of the Treaty by which it was ratified remain in force, with the exception of that

that article which entitles his legal heirs, according to their degrees of kindred or connexion, to share the allowance hitherto enjoyed by him; and it may perhaps be necessary to pass an enactment repealing those Regulations which relate to his Excellency the Nawab; viz., Regulation II., sec. 21, clause 2; clause 2, sec. 1, Regulation XI., 1827; Regulation XVII., sec. 29, clause 2, 1827; Regulation XXXIV., 1827; the necessity of this Act, however, must rest on the opinion of Government.

23. In reference to the concluding part of your 5th para., I beg to reply, that points appear to be decided by the terms of the Committee's Report on the 24th August 1834, of which a copy was furnished to this department in your letter of October 18th, 1832, No. 2,918, in the territorial department, in accordance with the spirit of this Report, in which the various privileges enjoyed by the Nawab, in virtue of his station, are enumerated: they are now forfeited, and cannot be extended to any of his Excellency's heirs.

24. With respect to the Nawab's private property, I have the honour to inform the Government that it is at present entirely in the possession of Memmanee, whose name has already been mentioned as one of his widows; during my visit to the palace I called on the other widow, Doolun Begum, in compliance with her own request; but on my begging to know what she wished to communicate, she said that there remained nothing to add to the representations she had on that morning made in a letter. In this epistle she had advanced several charges against Memmanee, who, as I have observed, retained all her husband's property, and who, she averred, was secreting the articles of highest value, thus defrauding her and her heirs; the letter proceeded to state the writer's apprehension that Memmanee might make an illegal use of her husband's seals, of which she had assumed possession from the minister, Meerza Mahomed Alli, by fabricating documents for her own advantage: as a precautionary measure, therefore, I have requested that his Excellency's seal of office and the public records be sealed and placed under the charge of his widow, Memmanee, and his daughter, and that an inventory be taken of the property, until Government may signify its wishes on the subject; but I have no reason to believe that the accusations against Memmanee have any foundation.

25. I have heard by current report that the Nawab has left debts to the amount of about 140,000 rupees; of this, however, I have no official information, nor has any creditor yet preferred a claim. He has left in houses, lands, furniture, &c., &c., an amount of private property which I should imagine would defray the incumbrance; but this is merely my own impression.

26. In these transactions I conclude the British Government will take no part, as I should very respectfully suggest that the same scrupulous delicacy which has always led us to abstain from all interference with his Excellency's domestic and pecuniary arrangements would actuate our present conduct towards his heirs, and forbid our taking any part in the disposal of his private property, the division of which, and the liquidation of his debts, do, in my view of the subject, devolve on his immediate heirs, together with the provision for the numerous inmates of the zenana. There are, however, many parties and strong family feuds in the palace, which might lead to much difficulty and litigation in these arrangements; but the right, in order to prevent these evils, of assuming the direction of the affairs and procuring payment of the debts, and the expediency of such an interference, are questions which may, perhaps, hereafter form a subject for the consideration of the Honourable Board.

27. I beg to forward a genealogical table of the family of his Excellency the late Nawab of Surat.

28. I trust that I have now fulfilled the instructions of Government, having transmitted every detail I can collect relating to the points on which it wished to be informed, and I hope it will not be considered irrelevant if I here express my sincere regret for the event in which this duty has originated; the British Government has lost a faithful well-wisher and firm ally, although shorn of the power that might have made his loyalty of any avail, and the city of Surat will long have cause to lament the decease of one whose liberal hospitality and

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kindness of disposition were duly appreciated, and by whose departure the ancient line of her prince is become extinct.

I have, &c.
(signed) *G. L. Elliot*,
Agent for the Honourable the Governor,
Surat.

Surat, Office of Agent for the Honourable the Governor.
28 August.

From Sir *R. K. Arbuthnot*, Bart., the Agent for the Honourable the Governor at Surat, to *J. P. Willoughby*, Esq., Secretary to Government, Bombay, dated 15 November 1842.

Sir,

15 Nov. 1842.

With reference to your letter of the 27th ultimo, No. 2,723, transmitting copies of letters from the widow and niece of the late Nawab of Surat, I have the honour to report, for the information of the Honourable the Governor in Council, that agreeably to the instructions contained in it, I considered it advisable immediately to direct the native agent to proceed to the palace of his late Excellency, for the purpose of making arrangements to prevent the misappropriation of any part of the property left by him, and I now beg to transmit the report of that officer to me on the subject, explanatory of the manner in which he performed the delicate task assigned to him.

2. The Honourable the Governor may consider it unnecessary I should forward a document so much in detail as the native agent's report for his perusal; but being anxious he should be fully acquainted with the steps which were taken, as well as the manner in which my proceedings (loudly complained against by the parties in possession) were conducted, I trust that no objections will be taken to my doing so on the present occasion. I have only to add, that, excepting from the vague assertions of the opposite parties, and what is written in the latter part of the 22d para. of the native agent's report (and the evidence therein is not of a nature to have admitted of my acting upon it without bringing discredit on the parties accused), I have no reason to believe that any part of the jewels or ornaments left by the late Nawab has been secreted or removed.

3. With respect to the questions of the succession to the rights of his Excellency, and the illegitimacy of his daughter, both of which are brought forward in the letters of Shahzadi Begum, transmitted with yours under reply, and of Padshah Begum, received with yours of the 7th instant, I beg respectfully to refer Government to the report of my predecessor, dated 28th August 1842, in which these points are discussed, and at the same time, as the case is one of a delicate nature, to request instructions, whether it is the wish of Government that fresh evidence should be taken in support of their allegations, or that I should be governed by the result of the inquiries which my predecessor had instituted as detailed in his report.

I have, &c.
(signed) *R. K. Arbuthnot*, Bart.
Agent for the Honourable the Governor.

Broach, Office of the Agent for the Honourable the Governor,
15 November 1842.

From *T. R. Davidson*, Esq., Official Secretary to the Government of India, to *J. T. Willoughby*, Esq., Secretary to Government, Bombay, dated 24 February 1844.

Sir,

24 February 1844. Foreign Department.

In reply to your letter, No. 12, of the 29th of November last, forwarding, in continuation of previous correspondence, a translation of communications received from Bukhtiar-ool Nissa, daughter of the late Nawab of Surat, I am directed to state, with reference to the only part of the communications which appears

appears to require consideration, that the Honourable the President in Council cannot authorise the giving to the Nawab's daughter a copy of Mr. Thomason's letter of the 9th of September, conveying the decision of the Government on the claim of the Nawab's descendants to the stipend which he enjoyed, and giving instructions for the distribution among them of the Nawab's private property.

2. With respect to the doubts which are supposed to exist as to the legitimacy of Buktyar-ool Nissa according to the Mahomedan law, his Honour in Council thinks that this question may very properly be waived, and that in the distribution of the property, Baktyar-ool Nissa should receive a portion of a legitimate daughter of the Nawab.

3. Mr. Thomason's letter of the 9th of September explained to you the principle on which stipendiary allowances should be fixed for the near relatives of the Nawab, and his Honour in Council is not aware that any further orders are called for at present on this subject.

I have, &c.

Fort William, 24 February 1844. (signed) *T. R. Davidson.*

FROM the Agent for the Honourable the Governor at *Surat*, to *J. P. Willoughby*, Esq., Chief Secretary to Government, Bombay, dated 9 April 1844.

Sir, 9 April 1844.

I HAVE the honour to acknowledge the receipt of your letter, dated 22 March 1844, No. 971, transmitting a copy of the memorial from Bukhtiar-ool Nisa Begum, the daughter of his Excellency, the late Nawab of Surat, and requesting me to submit to Government, with as little delay as possible, such information as the records of my office may furnish, on the several points alluded to in it, more especially in regard to the assertion made in the concluding part of the 7th para., that the memorialist's recognition by the British authorities at Surat, as heir of his Excellency, was on her Bismillah, A.D. 1826, "formally signified by the firing of salutes from the Castle of Surat;" and with respect to the allegation contained in the 8th para., namely, that "on the 24th "December 1829, the memorialist being then nearly 8 years old, Sir John "Malcolm, then Governor of Bombay, took her on his lap from the arms of her "father the Nawab, and declared on behalf of the Honourable East India "Company that he adopted her as his daughter."

With respect to the first of these assertions, I beg to inform you, that salutes were fired from the Castle by order of Mr. Romer, agent for the Honourable the Governor at Surat, at the Bismillah of both the daughters of the Nawab, of whom mention is made in the memorial. There is, however, nothing on record to lead to the belief that he contemplated that any right would be thereby conferred on the children which they did not before legally possess. In fact the salutes were nothing more than compliments paid to the Nawab at a season of rejoicing which is usual in all Mussulman families at the Bismillah of their children.

It is true the Bismillah of boys is usually celebrated with greater ceremony than that of girls, but the mode in which they may choose to express their feelings on such an occasion is entirely optional with parents or guardians. It is not therefore very surprising that the Nawab, who had no male issue, should have wished to celebrate the Bismillah of his daughters with the ceremonies usually adopted in the case of sons, and there is no doubt the rejoicing was of a similar nature.

He may have even thought by doing so he was strengthening their claims to succeed to his pension and privileges, for he evinced a similar feeling on almost all occasions of ceremony; but it is not possible the public authorities could have supposed that the real merits of their claims would be affected by any proceedings of this nature, or a validity given to them in consequence, which they did not otherwise possess, any more than if the Nawab had expressly left a will in writing to the same effect, which would have been wholly invalid, since he had no power to create rights that had no previous existence. The same

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may be said of all the acts of the Nawab mentioned in the memorial, such as entering the name of his daughter in public grants, or placing the elephant of her husband first in public processions, &c., all indicative of his desire that they should be recognised as his successors, but which could give them no title to be so considered, without the express sanction of the ruling power.

The anxiety evinced on all occasions by the Nawab in regard to the succession of his daughter, most probably arose from doubts he entertained as to the validity of her title; and this opinion, I may observe, appears to be confirmed by his having thought it necessary, a short time after Sir John Malcolm visited Surat, to submit a proposition on the subject to Mr. Sutherland, the agent for the Honourable the Governor, which that officer forwarded in his own handwriting to Government in a letter dated 22 March 1830, to the address of Sir John Malcolm, superscribed "Secret and confidential," and the nature of which has never transpired, for the reasons given by Mr. Sutherland. The document in the handwriting of that officer will probably be found on the records of Government, and if so, it may throw some light on the Nawab's own views of the rights of his family. The reply to Mr. Sutherland's letter is dated 23 November 1830, in the Secret department.

Dated 22 March 1830.

With respect to the allegation contained in the 8th para. of the memorial, the facts of the case are these: Sir John Malcolm, while on a visit to Surat in 1829, was entertained by the Nawab, and on that occasion his daughter, Bukhtiar-ool Nissa Begum, being a child of seven or eight years old, was brought into the room and introduced to him. He then very probably, for I have not been able to obtain certain information on this point, took her on his knee, as stated in the memorial, and may have said he regarded her as his own daughter, which is a common complimentary mode of expression in this country. But there is no reason to suppose he intended, nor that he so expressed himself, that his words could bear such a construction formally to adopt her, on the part of the East India Company, and thereby recognise in her a right to succeed to her father, in virtue of such adoption as is implied by the words quoted in the memorial. If he took her on his knee at all, it was simply in the way that any man of kindly feelings would have done under similar circumstances, quite unconscious that his act was ever likely to be construed into a proof that he was conferring a great political right on the object of his attentions, or that the expressions he was using would be regarded hereafter in any other light than as mere words of compliment to her father, whose guest he was.

A box, the present alluded to in the memorial, was subsequently transmitted to the child by Sir John's private secretary, and delivered to the Nawab through the agent for the honourable the Governor; but whether it was accompanied by a letter to her address, I am unable to ascertain, as no official communication was sent with it, and there is no mention of the circumstance on my records. The letter to the address of Bukhtiar-ool Nissa Begum, to which reference is made in the memorial, and of which I have seen a copy, the original having been taken home by Meer Jaffer Allee, was not sent with the box in question, but in reply to a note that had been written to Sir John in her name, acknowledging its receipt. It is dated the 13th July, and contains the expression that he regarded her as his own daughter.

Before concluding this subject, I beg to add that a very full and minute account of Sir John Malcolm's visit to Surat, including an account of the entertainment given him by the Nawab, was drawn up by the agent for the Governor at Surat, Mr. Sutherland, and that no mention is made in it of the child's introduction to Sir John. He himself, also, drew up a minute, giving an account of his visit; but neither is any mention made in it of this circumstance, which would certainly have been the case had there been anything serious in the affair. There can be no doubt that what passed on the occasion was intended solely as expressive of the sociable and friendly feelings that existed on both sides, without any idea of attaching an importance to it of a political nature, as set forth in the memorial.

The only other points in the memorial which appear necessary to be noticed are, First, the allegation implied in the 2d para., that the great-great grandfather of the memorialist had succeeded to the Musnud of Surat in right of marriage with the daughter of Nawab Teghbegh Khan. But a reference to the minute of the Honourable J. Duncan, mentioned in the last part of the same para. will sufficiently explain that this was not the case. He obtained his appointment

appointment from the Emperor of Delhi, at the special request of the East India Company, with whose interests he had identified himself in the commotions that followed the death of Teghbegh Khan; and instead of being permanently seated on the Musnud, I believe the appointment was granted for life, as in cases of a similar nature, or during the pleasure of the ruling power; Secondly, the legitimacy of the memorialist. The inquiry into this point was, in the first instance, out of delicacy to the family, disallowed by order of the Bombay Government; and subsequently the Government of India said it might very properly be waived, and she should be permitted to receive the share of the Nawab's private property, to which, as his legitimate daughter, she should be entitled. But now, since a claim is advanced to succeed as a matter of right to the pension and privileges of the Nawab, on the grounds set forth in the last part of the 10th para. of the memorial, that "her perfect legitimacy is "established beyond a shadow of doubt," the question has assumed a different aspect; and it becomes of importance to inquire how far this is really the case, even though it may not be the grounds on which her right to succeed to the privileges of her father was at first negatived.

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Vide letter from Bombay Government to the Agent for the Hon. the Governor, dated 24 Jan. 1843, No. 188; and from the Government of India to Bombay Government, dated 24 Feb. 1844, No. 196.

The circumstances under which the mother of the memorialist was introduced into the palace of the Nawab are mentioned in the 7th para. of the memorial, and I am not inclined to dispute the accuracy of the facts therein stated. I also admit that the children of a man's female slave are his lawful offspring, provided he claim their parentage, as that is a point clearly laid down in all Mahomedan law books.

But the question is, was the mother of the memorialist a slave in the strict and legal sense of the term, so that the parentage of her children could be established in the Nawab, according to the Mahomedan law? for this is essentially necessary to entitle them to claim as his heirs. Now I imagine this could not have been the case, for by that law it is positively laid down that there are only two descriptions of persons recognised as slaves: first, infidels made captive during war; and secondly, their descendants, to neither of which classes did the girl in question belong when she was purchased by the Nawab.

Vide Principles of Mahomedan Law, by M'Naughton, chap. 9.

And this doctrine is fully borne out by a reference to McNaughton's Precedents of Mahomedan law, chapter 8, from which it will be clearly seen that in no case can a person legally free become a subject of property, in other words a slave, except under the circumstances above noticed; and further, the sale and purchase of children are declared illegal and invalid; and children by them are held to be unlawfully begotten if the parents had not been previously married.*

Such being the case, the mother of Bukhtiarool Nissa Begum can only be regarded as having lived with the Nawab in a state of fornication, when she bore children to him; and consequently, as their parentage cannot be established in the Nawab, according to the Mahomedan law, the offspring of the connection must be considered illegitimate.

On the other hand, it is fair to state that it is the generally received opinion in this part of India, that free-born children, purchased under any circumstances, and admitted into the harems of Mahomedans of rank, become slaves, and

* The following extracts from the chapter above quoted appear to bear particularly on this point:

"As the original state of man is freedom, no free person, whether Hindoo or Mussulman, can "legally become a slave, from the circumstance of his having been sold in a year of scarcity, out of "necessity. The contrary doctrine is maintained only by very weak authorities. That such sale "does not constitute slavery is the authentic opinion.

"Children born of a concubine, the property of the father, and either she or her mother had been "made captive in an infidel country and had been duly subjected to slavery, the connexion without "marriage is legal, and the parentage of her offspring would vest in the father if he claimed them, and "after his death they would be entitled to a portion of inheritance; but if she had not been duly sub-"jected to slavery by being made captive in an infidel country, as above described, such concubine is "not a slave in the legal sense of the term, and connexion with her is unlawful without marriage; "nor will the parentage of her offspring be established in the father, because it is a requisite con-"dition in the establishment of parentage that there should be a consort, and consorts are either "principal or inferior. A wife is of the first description, the parentage of whose offspring is established "in the husband independently of any claim on his part, and cannot be disavowed by his denial. "A slave is of the other description, the parentage of whose offspring is not established in the "father without claim. The right of inheritance depends on the establishment of parentage, conse-"quently the children of such concubines are not heirs."

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and are treated as such. But whether a local custom of this kind would afford sufficient grounds to set aside the law on the subject, is a question I am unable to answer, and it should be referred to the law officers for exposition. The local custom accounts for the words "Abeekee Nawab" being used in the register of the marriage of the Nawab with the mother of the memorialist, as detailed in the 10th para. of the memorial, since it is strictly prohibited by the Mahomedan law, that a man may marry his slave; and indeed so unusual a proceeding was the marriage of the Nawab with this girl, that I much doubt whether the doctrine that a man may marry a slave, even should she have been previously emancipated, is admitted to be orthodox. It is hardly necessary to add the words quoted in the 10th para. of the memorial; in themselves they afford no proof of the person to whom they refer having been *bonâ fide* a slave. They simply indicate that it was believed she was so at the time they were written, or at all events that the writer wished it to be so understood.

I have, &c.
(signed) *R. K. Arbuthnot,*
Agent, Governor.

Camp Kurod, Office of Agent
for the Honourable the Governor,
9 April 1844.

Political Department, 4 September (24) 1844.

Our Governor in Council at Bombay.

Meer Jafur Alee Khan.

4 September 1844.
22 August 1844.

Para. 1. We transmit to you copy of a letter which has been addressed to us by Meer Jafur Alee Khan, son-in-law of the late Nawab of Surat, and of our reply.

2. You will observe that we have consented to advance 10,000 rupees to Meer Jafur Alee Khan for the expenses of his return to India. The time and mode of recovering the amount we leave to your judgment.

3. With regard to the remaining six requests preferred by Meer Jafur Alee Khan in behalf of his wife, Bukhtyar-oon Nissa Begum, the extent to which they can properly be complied with will partly depend upon the relative rights according to law or usage of the Begum, and other members of the Nawab's family. You will, we have no doubt, in all your proceedings on the subject, deal liberally towards the family itself, and justly as between its different members.

4. It is our desire that no member of the family may suffer in circumstances, nor, so far as possible, in dignity, by the change which has taken place in their position, and we are not anxious that any larger portion of the stipend of 1½ lac per annum should be saved to Government, than that which was properly applicable to the maintenance of the titular rank of Nawab, and which will now no longer be necessary.

5. We take the same opportunity of transmitting to you copy of a letter dated 6th August, which Meer Jafur Alee Khan has addressed to us, asserting on the part of Bukhtyar-oon Nissa Begum, a claim to inherit the property of Shahzdee Begum, the late Nawab's niece, who is stated to have died on the 5th of April last.

We are, &c.
(signed) *J. Shepherd.*
H. Willock.
&c. &c.

London, 4 September 1854.

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3 May 1856.

No. 1.

From Sir *R. K. Arbuthnot*, Bart., late Agent for the Honourable the Government, Surat, to *J. P. Willoughby*, Esq., Chief Secretary to Government, Bombay, dated 3d November 1845.

Political Department.

Sir,

1. I HAVE the honour to forward, for the confirmation of Government, my decision upon the claims to the inheritance of the late Nawab of Surat; also my decision upon the various claims which have been brought forward to property belonging to the estate of his Excellency, which is now in sequestration; my decision on the claims of Meer Jaffur Ally for the funeral expenses of the Nawab, and the maintenance of his household, pending the reference to Bengal relative to the succession to the title and pension of his Excellency, and a statement of the claims of the Nawab's creditors, showing the amount which has been allowed and disallowed in each case after a careful inquiry. 3 November 1845. Accompaniment (A.), Nos. 1 to 8. Accompaniment (B.), Nos 1 to 23. Accompaniment (C.) Accompaniment (D

2. These decisions have not been communicated to the parties interested. Should they meet with the approbation of Government, I beg respectfully to suggest that instructions may be issued to the Agent at Surat to furnish each of the petitioners with a short abstract in Guzerattee of the result of his application, as it would not be advisable in all the cases to give copies of the decisions, which contain information not intended to be communicated to them.

3. I have endeavoured as succinctly as possible to embody in each decision a complete abstract of the circumstances of the claim to which it relates, as well as the evidence adduced in support thereof, so as to enable Government to form their opinion without having to refer to the voluminous documents I have had to wade through to enable me to come to a right understanding of them. Should it be necessary in any particular case to refer to the original proceedings, the Agent at Surat will have no difficulty in furnishing them, as each has been separately prepared, and the papers connected with it separately filed.

4. In communicating to the applicants the decision upon their various claims, the Agent at Surat should likewise be directed to make over to them the property in sequestration which has been awarded, together with any revenue which may have accrued therefrom while it was under Government management.

5. The rest of the Nawab's estate should be disposed of by public or private sale, as may be most advantageous, and the proceeds, after payment of his funeral expenses and debts, as exhibited in the accompanying papers, divided among his heirs in the proportions stated by the Mahomedan law officers in the inheritance case. *Vide* (A.), No. 8.

6. In the event of Government approving of my decision on the claims of Meer Jaffur Alee to the Vackayenuggary hucks of the late Nawab, I beg to suggest it may be communicated to the Collector of continental Customs and Excise, as well as to the Collector of Surat, to enable these officers to withhold the payment they were in the habit of making, in lieu of a portion of these hucks, to his late Excellency, and latterly to the Agent for the Governor at Surat, as trustee for his estate. *Vide* (B.), No. 3.

7. My decision on the claims of Meerza Mahomed Ally Beg to the Moglaee hucks of Kucholee should also, if approved, be communicated to the Collector of Surat, in order that he may carry into effect the measures recommended for the future payment of these allowances. *Vide* (B.), No. 12.

8. The attention of the Collector of Broach should be called to a correspondence noted in the margin, which took place between the Principal Collector of Surat and Government, relative to the purchase by the Nawab of the village of Ootyadra, which is situated in the former zillah, with a view to an inquiry being instituted into the nature and condition of the tenure upon which it is held, as at the time of its sale it would appear the revenue management was vested in the Government, and transferred to the Nawab without their sanction, and it Principal Collector to Government, 11 May 1832; Government to Principal Collector, 5 June 1832, 2 March 1833.

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may now be advisable, in the event of the village passing, as is most likely, into other hands, that it should be resumed, making the revenue payable to the proprietor from the Government treasury after the share due to Government shall have been received.

The claims to this village, and the Agent's decision thereon, will be found in Accompaniment (B.), No. 1.

9. It will be observed from the correspondence above quoted, that Government positively refused their consent to the purchase of the village by the Nawab; the right therefore of the former incumbent to alienate it without having obtained this is the point for immediate inquiry. In the event of that being established, the advisability of Government purchasing it on their own account may afterwards become a question for consideration.

(B.) Nos. 10, 11. 14, 15. 17 and 23.

10. Government will observe that various claims have been advanced to property which it is alleged the Nawab and his predecessors had unauthorisedly seized from parties not under their jurisdiction, and which, from a mistaken impression of his power, he was allowed to retain. Any property of this description found in sequestration I have decided ought in justice to be restored to the parties from whom it was taken; the bulk of it was, however, given away by the Nawab in his lifetime to his followers and dependants; such portion I have not felt myself at liberty to touch, as it did not properly form a part of the Nawab's estate; but I have stated my opinion in deciding on the claims which were advanced to it, that it may be made the subject of an action in the ordinary courts of justice, should the applicants be disposed to prosecute their claims in that way, as soon as Government shall determine before what tribunal suits against the relations and servants of the late Nawab shall be entertained. There seemed no other way opened to the claimants to obtain redress. It will also have the advantage, if they choose to adopt it, not only of having the legal power of the Nawab to seize the property in question judicially determined (on which of course will rest the title of the dependants), but the original title of the applicants will be inquired into, and the rights of third parties who have advanced claims to some of the property in question be settled, which could not otherwise have been satisfactorily done.

11. If Government coincide in these views it will be requisite speedily to determine to what tribunal the relations and servants of the late Nawab are amenable. The Bengal Government in their letter, dated 25th February 1844, No. 1, expressed an opinion that no alteration in the law as it now stands was necessary; since those persons who have the privilege of exemption from the jurisdiction of our courts may retain it, none will require it. I beg, however, to state that I do not concur in this mode of settling the question; for in the first place, it still leaves it open to dispute to whom the privilege belongs, which is the point at issue, since not only may all the relations of the Nawab in the most distant degree claim it it on the grounds that they had formerly acquired it, but every person who has ever been in his service may do so on the same grounds. In the next place, ample evidence has been afforded since I have had charge of the Nawab's affairs to show the evil effects of having placed him beyond the pale of the regulations, in the acts of oppression he committed, not only in his own household, to which his jurisdiction was properly restricted, but indirectly in the case of individuals not subject to his authority, to such an extent in one instance as to induce the person subjected to his power to commit suicide; it is therefore most desirable the immunities enjoyed by him should not be continued to any of the surviving members of his family, even for their lives.

12. The course which I beg respectfully to point out for the consideration of Government is, in the first place, to take the opinion of the judges of the Sudder Dewanee Adawlut, who can alone legally interpret the regulations as to the effect of the Nawab's death upon those sections which bear reference to him, since it may be argued, that as there is now no Nawab, these sanctions have become a dead letter, in which case his relations and dependants, as a matter of course, become at once amenable to the ordinary courts of law, and the question of jurisdiction will then be set at rest without further discussion, even against the opinion of the Bengal Government. Should, however, any doubt be entertained regarding the liberal interpretation of the sections in question, and which the expressed opinion of the Bengal Government, as well as the wording of the sections themselves, may reasonably give rise to, then the propriety of an Act to annul them altogether is manifest, which I am humbly of opinion

opinion should be obtained. The extent of the privileges which the relations of the Nawab may be permitted to enjoy I shall notice in a subsequent part of this Report. 3 May 1856.

13. I have now to draw the attention of Government to the claims of Meer Jaffur Allee to be reimbursed his expenses for maintaining the household of the Nawab from the death of his Excellency till the decision of the Governor-general regarding the succession to his title and pension was made known. I have decided that these cannot properly be charged to the Nawab's estate. Meer Jaffur Allee may, however, reasonably expect that Government will take them upon itself, in consideration of the great length of time that elapsed before the Governor-general's decision was communicated to him, and as he had also strong grounds for believing that his right to at least half the pension would be recognised, in which case the maintenance of the establishment on its former footing would not have been out of place. I have accordingly stated in my decision on this part of Meer Jaffur Allee's claim that I should bring the subject separately to the notice of Government, which I now proceed to do. *Vide* (C.)

14. But first it is necessary to premise that Meer Jaffur Allee, after the death of the Nawab, protested in the strongest manner, on the part of his wife Bukhtyarool Nissa Begum, and her mother Ameeroolnissa Begum, against any interference by Government in their family affairs, and positively refused to be guided by my opinion as to the necessity of a reduction in the number of their followers, on the plea that this course would be derogatory to their dignity, and a slur upon the memory of his late Excellency. It must, therefore, be considered that the establishment was maintained on its old footing entirely at their own risk, and that Meer Juffer Allee is not entitled to any remuneration from Government on that account, except as a matter of favour.

15. Government has, however, admitted the propriety of providing for the relatives, slaves, and a certain number of the old dependants of the Nawab, by the grant of pensions. Meer Jaffur Allee may, therefore, claim at least to be reimbursed the expenses he incurred in maintaining these persons till the payment of their pensions commenced, and within the aggregate amount to which they would be entitled. Supposing the pensions to be granted from the period of the Nawab's death, I imagine Government will not object to admit his claim, or those of others, on the same account. It will then only be a question how far Government is liable for the overplus.

16. If the Government accede to this proposition, the extent to which it would be fairly chargeable is *Rs.* 1,22,122. 11. 10., as follows:

	Rs. *a.* *p.*
Amount of pensions, at the rate sanctioned by Government in their letter of the 22d March 1845, from the 8th August 1842, the date of the Nawab's death, till the 1st April 1845, when the payment of the pensions commenced - - - - - - - - -	78,622 11 10
Estimated allowance to Buktyarool Nissa Begum, the Nawab's daughter, at the rate of 1,500 rupees per mensem, as recommended in the 15th para. of my letter, dated 24th December 1844, from the same date till her death, on the 9th January 1845 - - -	43,500 — —
TOTAL - - - *Rs.*	1,22,122 11 10

17. But the whole of the pensioners were not maintained by Meer Jaffur Ally for the above period, as Shahazadee Begum, the niece of the Nawab, accompanied by several of the eunucks, and many of the female slaves, refused to be dependant upon him, and immediately after the Nawab's death left the palace, and went to live in separate apartments at their own cost. Badsha Begum, one of the Nawab's widows, also soon after her husband's decease declined to receive any allowance from Meer Jaffur Allee, and supported herself by borrowing money in the bazar, on account of which claims have been advanced, which will hereafter be considered.

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18. The extent of Meer Jaffur Ally's claim has, therefore, to be decided. It naturally embraces two periods, first, from the death of the Nawab till the Governor-general's decision was promulgated, during which he maintained the establishment on the same scale as in the lifetime of his Excellency, a period of 14 months and 23 days, reckoning from the 8th August 1842 to the 1st November 1843, and, secondly, from the date last mentioned till the payment of the pensions commenced, a period of 17 months, reckoning from the* 1st November 1843 to the 1st April 1845.

19. His expenditure during the first-mentioned period, according to the accounts rendered, was as follows:

	Rs.	*a.*	*p.*
Modekhana expenditure - - - - -	24,438	6	9
Sundries - - - - - - - - -	8,413	7	9
Monthly pay of establishment, as per nominal list furnished - - - - - - - -	42,694	6	9
TOTAL - - - *Rs.*	75,546	5	3

which includes the expense of keeping the Nawab's elephants, horses, &c., for the time specified.

20. The accounts, although rendered in the most minute detail, appear to have been written out for the occasion, and, therefore, afford no satisfactory grounds of confidence in their authenticity, the various items being entered on loose sheets, more in the shape of memoranda than accounts; but it is stated that in the Nawab's lifetime his expenditure was always recorded with great irregularity, consequently I have not thought it advisable, considering the rank and character of Meer Jaffur Ally, to cavil at those which he has now produced, especially as I have no reason to believe but that the amount therein stated has been *bonâ fide* spent. I beg, therefore, to recommend it should be paid in full.

21. During the second period embraced in Meer Jaffur Ally's claim, I consider he is entitled to be reimbursed his expenses for maintaining such of the Nawab's dependants only as had pensions allotted to them. He is, however, unable to furnish a detailed statement of his disbursements on that account separate from the rest of his establishment; he has therefore given in nominal lists of the pensioners whom he maintained, with a request that Government will pay over to him the amount of their pensions from the date of the promulgation of the Governor-general's decision till their payment commenced, an arrangement to which Government, I imagine, will not object, if it agree to pay the pensions in arrears for the period in question, which I beg strongly to recommend. The full amount of these arrears, at the rate sanctioned in their letter dated 22 March 1845, will be 42,075 rupees, † of which sum Meer Jaffur Ally will be entitled to 22,661 rupees, being the aggregate pensions of the pensioners maintained by him, according to his list; the remainder will have to be paid to the pensioners who maintained themselves, or to those persons by whom they were maintained.

† Including the pension to Ameer-solnissa Begum.

22. Meer Jaffur Ally has advanced a claim for interest upon the balance due to him for the maintenance of the Nawab's establishment, as he alleges he had to borrow money from sowkars for this purpose; but this has been disallowed, for the reasons stated in my decision on that part of his claim.

Vide (C.)

23. From the sums recommended to be paid to Meer Jaffur Ally, the amount of

* The letter from Government communicating the decision of the Bengal Government is dated 30 September 1843; but the official communication of the agent for the Governor was not made to the family till the 17th October, owing to some difficulty in translating the Bengal letter into Persian; from that date till the 1st November is claimed by Meer Jaffur Ally for the discharge of his followers. This short period has, therefore, been allowed.

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of 10,000 rupees advanced to him by the Court of Directors in England, for which he has passed a bond* to the agent at Surat, will have to be deducted.

24. I now proceed to consider the claims of Badsha Begum, one of the widows of the Nawab, for her maintenance, from the period of the Nawab's death till the payment of her pension commenced.

* *Vide* letter from Government to the Agent for the Governor at Surat, dated 22 March 1845, No. 1,487.

25. This lady was for many years before the Nawab's death treated by him with great indignity, having had inferior apartments assigned to her in a separate part of the palace, where she was kept more like a prisoner than a princess, and, as far as I can learn, for no other fault than a refusal to associate with some of the Nawab's friends in a way that would have been discreditable to her. His conduct towards her became also particularly marked by his soon after taking to his bed one of his female slaves (the Lady Ameeroonisa Begum), whom he afterwards married. It is not, therefore, to be wondered at that Badsha Begum was unwilling to be dependent on Meer Jaffur Ally, who had married the daughter of the latter lady, and was disposed to treat her in the same manner he had seen exercised in the lifetime of the Nawab. She accordingly, almost immediately after her husband's decease, declined to receive any allowance from him, and having called her brothers to live with her, through their assistance maintained herself by borrowing money in the bazar, the amount of which, *Rs.* 19,904. 10. 6., she now claims from Government, as she acknowledges the debt, and I have examined the banker's books who lent her money; there is no question as to its validity; but the expenditure was larger than it ought to have been, considering her manner of life. The setting-up her brothers with horses, &c., when they come to live with her, may have come to this; still that is no reason why Government should be called on to pay for their extravagance. The Begum has accordingly been told that her claim will be restricted to a sum equal to the arrears of the pension which has been settled on her, viz., 500 rupees per mensem, from the date of her husband's death, till the payment of her pension commenced, a period of 31 months and 23 days, aggregating a sum of *Rs.* 15,870. 14., which I beg to recommend should be paid in lieu of all demands. Of this sum, 8,500 rupees are included in the sum of 42,075 rupees, before specified in para. 21 of this Report.

26. In addition to it, she will be entitled to receive one-sixteenth share of her husband's estate, after payment of his funeral expenses and debts, the amount of which cannot properly be estimated. That, I imagine, is the extent of all the property she can call her own, as her jewels, and any private property she had, were taken from her by the Nawab soon after her disgrace.

27. The claims of Shazadee Begum to a maintenance have next to be considered. This lady was a niece of Afzooloodeen Khan. In her infancy she was brought up by his mother, Zeeaoolnissa Begum, and after the demise of that lady, went to reside in the family of her uncle, where she remained till his death. She was betrothed to Meenroodeen Khan, the present bukshy, the Nawab's nearest male relative, before the death of her grandmother, which event occurred in 1827; but although preparations for their nuptials are said twice to have been completed by the Nawab, their marriage did not take place, owing to a dispute between his Excellency and the bukshy connected with the succession to the Nawabship, to which Meer Moeenoodeen Khan laid claim as his nearest male heir. Shahzadee Begum accordingly, on the death of her uncle, took part with the bukshy, and almost immediately quitted the palace, and went to reside in separate apartments, as before stated, those which belong to her grandmother, and where she herself was brought up, refusing to be dependent for her support on Meer Jaffur Ally, or the widow and daughter of the Nawab, an example which was followed by the old dependents of Zeeaoolnissa Begum, who attached themselves to her granddaughter, headed by a eunuch of the name of Seedee Roomee, who had been Zeeaoolnissa's chief attendant, and was always treated by her with great confidence. How Shahzadee Begum was able to support herself and dependents, in addition to a large establishment of sepoys whom she maintained after she quitted the palace, is not properly known. It is generally supposed that Seedee Roomee provided the funds for this purpose, partly by mortgaging his own property, and partly by borrowing money in the bazar in the name of his mistress, for which he became security, although by what means he obtained credit with the sowkars

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is a mystery. Be that as it may, Shahzadee Begum, after living on resources thus obtaining for a period of 20 months, at length died of a complaint, from which she had long suffered, on the 6th April 1844, and Seedee Roomee has now brought forward a claim upon Government in her name for the amount of debt which he alleges was incurred for the support of herself and establishment from the time of her uncle's death to the 8th March 1845, aggregating a sum of *Rs.* 30,118. 3. Shahzadee Begum, it may be here noticed, was married to the Bukshy, when in a dying state, the day before her death, for the purpose, it is supposed, of giving him a right to prosecute claims to a large extent which she had preferred against the late Nawab's estate, and, if these were allowed, to succeed to the property arising therefrom as her legal heir.

Vide Accompaniment (B), Nos. 6, 7.

28. In support of his allegation, that the sum above-mentioned was really borrowed, Seedee Roomee has produced a nominal list of the sowkars from whom the money was obtained, showing the amount which is due to each; and these persons having for the most part appeared before me, and produced vouchers for the same, under the seal of Shahzdee Begum, I do not doubt but that the sums which are said to be owing are really due. Whether the money was *bonâ fide* paid to the Shahzadee Begum, and disbursed on her account, or whether she sanctioned her seal being affixed to the papers which have been produced, is not so manifest. The bankers, however, it is quite clear, have no claims upon Government, whether the money be owing by Shahzadee Begum or Seedee Roomee, as the advances were made entirely on their own responsibility, and without the knowledge of the agent for the Governor at Surat; they should therefore be told that Government cannot under such circumstances recognise debts thus incurred, and that they must look to the securities upon which the money was lent for its repayment.

29. This point being settled, it has now to be determined to what extent Government should be considered liable for the support of Shahzadee Begum and her followers after they separated themselves from the rest of the Nawab's establishment. Neither she nor they, I consider, were justified in taking this step pending the decision of Government as to who should be the Nawab's successor; they have, therefore, in my opinion, forfeited all claims upon Government for maintenance during the period in question; nor do I think the parties at whose expense they lived, be it Shahzadee Begum or Seedee Roomee, are entitled to any consideration, since the latter frequently applied to me both in his own name and that of his mistress for pecuniary assistance, and was invariably told that no aid would be afforded, as Shahzadee Begum ought not to have quitted the protection of Ameeroolnissa Begum, with whom she was living at the time of the Nawab's death, and that Meer Jaffur Ally being willing to support them, they should apply to him, a concession which Seedee Roomee would never consent to, as he was in fact playing a game for himself and the Bukshey, and therefore most unwilling to become dependent in any way upon Meer Jaffur Ally.

30. The establishment which he maintained for Shahzadee Begum from the time when she quitted the palace was also preposterous, considering the position in the Nawab's family, which was that of a mere dependent, as she had been cut off from any share of her paternal inheritance by reason of her father having died in his father's lifetime. It consisted, according to Seedee Roomee's statement, of no less than 57 persons, including his own personal followers, in addition to the Nawab's dependents, who had attached themselves to Shahzadee Begum, 49 in number.

31. Seedee Roomee has furnished in the most minute detail a statement o the expenditure of each of the individuals composing the above establishment, aggregating *Rs.* 19,477. 3. 11. Shahzadee Begum's personal expenses are stated at *Rs.* 10,302. 11. 2; her funeral expenses and those of one of the slaves who died, *Rs.* 337. 1. 2., making together a sum total of *Rs.* 30,117. 0. 3., which he avers was expended before and after her death. His accounts, however, are entitled to no confidence, as he is not a person to be trusted, and they have evidently been prepared to suit the occasion. They should, therefore, be disallowed, and Seedee Roomee informed, that, as Shahzadee Begum quitted the Nawab's palace of her own accord, and chose to maintain an establishment pending the decision of

of Government regarding the succession to the Nawabship, it does not hold itself responsible for the expenditure incurred under such circumstances. 3 May 1856.

32. I am, however, disposed, if Government agree to the payment of the pensions to the Nawab's relatives and dependents from 1st November 1843, to recommend that the aggregate amount which may be due to such of them as were maintained by Shahzadee Begum from that time till the payment of their pensions commenced, should be paid to the agent for the Honourable the Governor at Surat to be held by him in deposit on account of her estate pending the adjudication before a competent tribunal of such claims as may be brought against it, whether by Seedee Roomee, or the Sowkars, who allege they lent her money for her expenses.

33. The number of the Nawab's followers who attached themselves to Shahzardee Begum to whom pensions have been assigned, is 49, their pensions, aggregate, 365 rupees per mensem, making the total arrears due to them from the 1st November 1843, 6,205 rupees.

34. Shahzadee, Begum's name, was not entered on the pension list, as she had died before it was submitted for the sanction of Government. But I consider that Government is fairly chargeable with an allowance to her, as well as to the rest of the Nawab's dependents from the date when the pensions shall commence till her death. Had she lived, I should have recommended an allowance for her support of 300 rupees per mensem, at which rate the arrears should now be paid. The aggregate amount for the period above mentiond is 1,560 rupees, making the total sum payable by Government to be held in deposit on account of her estate 7,765 rupees.

35. Government may consider it hard upon the creditors of Shahzadee Begum and Seedee Roomee to allot no allowance either to her or her followers from the date of the Nawab's death. But the former, I doubt not, made no advances without having good security of some kind or other for their repayment, and may therefore be left to recover them as in ordinary circumstances. The latter is entitled to no consideration, as it was solely by his advice and instigation that Shahzadee Begum and her followers quitted the protection of the Nawab's widow and daughter, with whom they were living at the time of his death, and who were able and willing to support them. I have no reason to believe that Shahzadee Begum died possessed of any property worth mentioning; whatever she was known to leave, was taken charge of by me at the time of her death, and ought now to be held in deposit on account of her estate pending the final settlement of any claims that may be brought against it, as recommended in the case of her pension. It is said she possessed jewels of considerable value in the Nawab's lifetime, but these, she declared before her death, were taken from her by her uncle. There is no proof, however, adduced of this having been the case; on the contrary, there is reason to suppose she had them in her own possession at the time of his death. It is therefore by no means improbable that she concealed them, and it may have been from this source that Seedee Roomee was able to provide funds for her maintenance. It is certain they were not produced when the Nawab's property was taken in sequestration. For information connected with the claims of this lady for these jewels, and on another account, I beg to refer Government to the decisions which accompany this Report. (B.), Nos. 6 and 7.

36. I now proceed to a consideration of the claims of Ameeroolnissa Begum, the second widow of Meer Afzooloodeen Khan, and the mother of Bukhtyaroolnissa; the Begum government is aware of the early history of this lady; she was purchased when a child by Meer Nusseerroodeen Khan, the late Nawab's father, and after having lived for some time in his family as a menial servant, was transferred to his son, with whom she lived as a concubine for a number of years. They were then married, several years after the birth of the daughter above mentioned.

37. In their letter, dated 22d March 1845, Government were pleased to sanction, until the pecuniary affairs of the late Nawab were settled, and the amount of his estate ascertained, a pension of 500 rupees per mensem to this lady. I now beg respectively to recommend that this should be continued during her life, and the arrears paid from the 1st November 1843, in the same

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manner as to the other dependents of her husband. The arrears are included in the sum of 22,661 rupees, recommended to be paid to Meer Jaffur Ally, before specified (para. 21).

38. I have received from Ameeroolnissa Begum a strong remonstrance against the small pension which has been assigned to her, which I beg to forward for the consideration of Government. But I do not recommend any increase to it, as she has substantiated her title to several gardens which were given to her husband, from which she will derive an additional income of nearly 700 rupees per annum, besides possessing a very considerable property in jewels, which she had accumulated in his lifetime. She is also entitled to one-sixteenth of her husband's estate, after payment of his funeral charges and debts, the amount of which cannot correctly be estimated till the property is finally disposed of. I consider the estimate of the establishment which accompanies her letter to be much larger than is necessary, considering the retired manner in which Mahomedan females are obliged to live, and that she has the benefit of the establishment entertained by Meer Jaffur Allee, for his daughters, who are now under her care.

39. With reference to the remarks contained in this Begum's letter, relative to the allowance which was granted to Padsha Begum, or Doolhun Begum, as she is frequently styled, the other widow of the Nawab, I would wish to observe, that, considering the former rank of this latter lady (she was a daughter of the Nawab of Broach), and the absence of any proof that she ever conducted herself in such a way as to merit the treatment she received at the hands of her husband, I am certainly of opinion she is entitled to a pension at least equal to what has been assigned to Ameeroolnissa Begum; more especially as she is entirely dependent on it for her support, while the other is possessed of considerable property, besides having the advantage of living with Meer Jaffur Ally.

40. I regret I cannot give my support to the request contained in Ameeroolnissa Begum's letter relative to the increase of pension to Booah Ujub Bahar, who was formerly a concubine of the late Nawab, as although the amount which has been settled on her may not be sufficient to maintain her in the ease and luxury she formerly enjoyed, yet it is ample for her decent support, considering her rank in life, which is only that of a slave, legally entitled to no provision from her master's property, though, as she has borne children to him, she could claim emancipation, if that were requisite. I may add, that she receives, in addition to her own pension, a sum of 20 rupees per mensem assigned to Walaity Khanum, a child of 11 years old, who was adopted by Nujeeboolnissa Begum, and is now in her charge. As an accompaniment to the Begum's letter, I beg to forward the translation of one which I have received from Booah Ajub Bahar herself on the same subject.

41. It is now necessary to consider the claims of Meer Jaffur Ally, and his infant daughters. These are put forth on the grounds that he and they are the rightful heirs of Bakhtyaroolnissa Begum, who died, as Government is aware, on the 9th January last. The claims of this lady to a liberal pension from Government, in addition to her share of her father's private property, have been fully admitted by the Court of Directors in their letters to Government, dated 21st August and 4th September 1844. I accordingly recommended in my letter, dated 24th December following, that Government should be prepared to make up to her an income to the extent of 3,000 rupees per mensem, which I stated I considered an ample provision for a Mahomedan lady of rank in this country. But Bukhtyaroolnissa Begum unfortunately died almost immediately after the despatch of my letter. Consequently Government wrote on the 22d March 1845, that it was unnecessary then to consider my proposition for an allowance to her; I was, however, desired to report whether she had left any, and what family, and, if so, the amount of pensions I should recommend for their support.

42. I have now accordingly to state, that Bukhtyaroolnissa Begum left two daughters, the eldest of whom is five, and the youngest about three years of age, both of whom, as well as their father, Meer Jaffur Ally, may be considered entitled to a provision from Government.

43. Before

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43. Before proceeding, however, to consider their claims, I beg to state that Bukhtyaroolnissa Begum, not being included in the list of pensioners, which was submitted for the sanction of Government, it will be but fair to Meer Jaffur Ally to pay him in arrears for her maintenance, as well as for the other relations and dependents of the Nawab, whatever allowance Government would have granted to her had she lived. This amount, I respectfully recommend, should not be less than is stated in the 15th paragraph of my letter of the 24th December 1844: viz., 1,500 rupees per mensem, aggregating for the period for which it is due a sum of 22,450 rupees, leaving it at the option of Government to award him any larger sum after the division of the Nawab's estate has been made, and the exact value of his wife's share ascertained, which cannot at present be done, from the uncertain value of a great part of the property in sequestration. I may state, however, that the Nawab's debts having turned out so much less than was at first supposed, it will in all probability be sufficiently large to absolve Government from any further charge on her account.

44. To enable Government to estimate the extent of the property which will devolve on Meer Jaffur Ally and his children, as heirs of Bukhtyaroolnissa Begum, I beg here to state that the share of her father's inheritance, to which she has been declared entitled, is one-half, or eight annas in the rupee, after payment of his funeral charges and just debts; the former including some claims of a pressing nature, paid by Meer Jaffur Ally immediately after the Nawab's death, amount to *Rs.* 29,011. 4. 7.; the latter to *Rs.* 1,15,511. 2. 8.; making together a sum of *Rs.* 1,44,522. 7. 3. chargeable to the estate. But as a set-off to this, there is deposited in the Collector's Treasury at Surat a sum of *Rs.* 50,526. 0. 6., belonging to the estate, partly revenue accruing from the property in sequestration, and partly sums recovered on its account, which may be considered available for the immediate liquidation of the demands against it, and which I would respectfully suggest should be at once employed in this way: first, by the payment in full to Meer Jaffur Ally of his claims against the estate, and next to the Nawab's creditors, in the proportion of their claims, as far as the balance will admit. Meer Jaffur Ally's claim, it is proper to add, has already been reduced by a sum of *Rs.* 7,400. 9. 6. belonging to the estate, which he recovered soon after the Nawab's death, as by a sum of 13,000 rupees which was advanced to him from the proceeds of the estate, under instructions from Government, dated 14th March 1843, prior to the receipt of the Governor-General's decision; and the price of an elephant and some other property belonging to the estate, which the ladies of the family were allowed to retain under authority from Government, dated 19th December 1843, the estimated value of which may be given at 4,000 rupees.

Vide decision in (C.)

Vide decision in (C.)

45. The private property of the Nawab, from which he derived an income in addition to his stipend from Government, I take this opportunity of reporting with reference to the 16th para. of the letter from the Court of Directors, dated 21st August 1844, was confined to the rent of the lands in the town and neighbourhood of Surat, the Mooglaee hucks and fees, to which allusion was made in my letter of the 29th July 1843, and of a village (Ootyadra), situate in the Broach Zillah, which was purchased by him in A.D. 1831, together with a small amount arising from the rent of some houses and shops in the town of which he had the proprietary right.

46. The lands in the neighbourhood of Surat extend to about 1,544 begas; they yielded in the past year, under Government management, a revenue of *Rs.* 10,354. 0. 3.; the Mooglaee hucks for the same period came to 6,731 rupees; the Vakaya Neegaree fees averaged *Rs.* 1,498. 0. 3., and the rents of the houses and shops *Rs.* 1,613. 2. 11., making the total annual revenue arising from his private property in the town and neighbourhood of Surat *Rs.* 20,196. 6. 2.; to which, if we add the revenue of Ootyadra, which may be estimated, as I have not the accounts by me, at 3,000 rupees per annum; his entire annual income, independent of the Government stipend, could not have been less than *Rs.* 23,196. 6. 0.

47. With the exception of the Vakaya Neegaree fees, which he enjoyed as a life grant under the sanction of Mr. Duncan, Governor of Bombay, as explained in my decision on Meer Jaffur Ally's claim to them, the greater part of the Nawab's possessions, including his Mooglaee hucks, appear to have been

3 May 1856.

been inherited by his father, Meer Nusseeroodeen Khan, prior to the Treaty of 1800, and being regarded as his private property, were allowed to remain in his possession when Surat and its dependencies were ceded to the British Government.

48. It is therefore beyond doubt that they were not held by the late Nawab in virtue of his office, as supposed by the Court of Directors in their despatch above quoted, but were strictly his private property. The rest of his possessions appear to have been purchased after the cession of Surat either by Meer Nusseeroodeen Khan, or his wife, Zeeaoolnissa Begum, from whom they descended to their son, Afzooloodeen Khan, or by himself.

49. In estimating the future resources of the Nawab's estate, it will of course be necessary to deduct from the amount which it yielded in his lifetime, the Vakaya Neegaree fees which have lapsed to Government, *Rs.* 1,498. 0. 3., and the annual revenue of certain gardens and Mooglaee hucks, which have been declared to belong to the widow and daughter of the Nawab and others, aggregating *Rs.* 4,103. 5. 6., still leaving an annual revenue of *Rs.* 17,545. 0. 3., besides jewels, palaces, houses, &c., &c., to be divided, after payment of his funeral expenses and just debts, among his heirs-at-law. The value of the jewels, &c., cannot be stated, even at an approximation, till the whole shall have been finally sold. They ought not, in my opinion, to yield less than one lac of rupees, and may yield double or treble that amount.

A statement of these gardens, &c. is forwarded as an accompaniment to this Report, marked 3.

50. The revenue management of the Nawab's property, I may here observe, was transferred by me to the charge of the Collector of Land Revenue, in whose hands it still is. There will therefore be no difficulty in making arrangements for the collection and payment by him of the Mooglaee hucks, which are now in sequestration (and about which the Court of Directors have expressed some anxiety), as in the case of the claims of a similar nature, which in the Surat collectorate amount annually to a considerable sum.

51. It now remains to determine the provision which should be granted to Meer Jaffur Ally and his children. Their names were not included in the list of pensioners, as they would naturally have enjoyed the full benefit of whatever allowance Government might have granted to Bukhytaroolnissa Begum; but the death of that lady having altered their position, their claims to a separate maintenance have to be considered.

52. There is no doubt that Meer Jaffer Ally, although the son of a person possessing considerable wealth, has no fortune of his own, and became after his marriage entirely dependent upon the Nawab; he is therefore as much entitled to a provision from Government as any of the Nawab's relatives.

53. His children, strictly speaking, have no claims upon Government, as their mother's pension was only to have been a life grant, and had she lived till their marriage Government might have been considered as fairly absolved from any further charge on their account; as it is, her death has made them dependent upon Government, as well as their father, for the means of living in a manner becoming their rank and condition of life.

54. I feel therefore disposed, in accordance with the liberal views which the Court of Directors have expressed as regards this family, in their despatch dated 4th September 1844, strongly to recommend that whatever allowance Government would have been pleased to confer upon Bukhtyaroolnissa Begum should now be continued to them and their father. And although Meer Jaffur Ally may not, strictly speaking, be entitled in his own person to so large an allowance, yet considering the position he held in the late Nawab's family, and that it will be incumbent upon him as his son-in-law, and the father of the only representative of his Excellency now alive, to maintain a more dignified appearance than would have been otherwise necessary, as well as that his daughters are naturally dependent upon him, I think Government will do well to settle the entire allowance upon him for the full period of his life, to descend to his children upon his death in the proportion of one-half to each for their respective lives. This arrangement will of course be considered as absolving Government from all future claims on their account for marriage portions or other expenses. His children, I may add, are entitled by the law of inheritance to the

the largest share of their mother's estate, including her jewels, which were of considerable value, and they will without doubt eventually succeed to the property of their grandmother.

55. It now only remains for me to draw the attention of Government to the privileges which I am of opinion should be conferred on Meer Jaffur Ally, and such of the relatives of the late Nawab as Government may consider entitled to them.

56. Meer Jaffur Ally in his letter to the Court of Directors, dated 22d August 1844, which was forwarded to me for my report with yours of the 25th November of the same year, particularly requested that the family should be treated with the same respect and distinction as hitherto. In my reply I stated that the honorary distinctions which he claimed were of the nature of those usually accorded to princes, and that in the present position of the family they would be out of place. Meer Jaffur Ally has, however, repeatedly urged upon me the expediency of his being entitled to some marks of distinction of this nature. I have therefore thought it necessary again to allude to the subject, for the purpose of saying that upon further deliberation, and with every desire to concede to Meer Jaffur Ally whatever is just and right, I still adhere to my former opinion, that his request is inadmissible.

57. Next to honorary distinctions, Meer Jaffur Ally considers it of great importance that the family should not be subjected to the ordinary jurisdiction of the Adawlut. This formed also one of the requests contained in his letter to the Court of Directors above mentioned.

58. I have already said in the 12th para. of this Report, that I consider it highly desirable that the exemption from the laws which is now enjoyed by the relatives and servants of the Nawab should be abolished, either by an interpretation of the Judges of the Sudder Dewanee Adawlut, or by an Act of the Legislature. If this be determined on, it will, of course, subject them at once to the ordinary process of our courts of law; but this is not advisable, as they would certainly lose in dignity and public estimation, by being put on a level with the rest of the community; and they are, I think, fully entitled to be treated with the same distinction that is accorded to persons of rank in other parts of the Presidency, which is particularly evinced by their exemption from the ordinary rules of the Adawlut, and the appointment of an officer to deal extrajudicially with cases in which they are parties. I beg, therefore, strongly to recommend that a similar privilege should be conferred upon Meer Jaffur Ally and his children, as well as the other members of the Nawab's family, who could claim exemption from the regulations in his lifetime. A new Act will be necessary for this purpose, which should be obtained, authorising the appointment of an agent, who shall have power to try cases in which they are parties, in the same manner as is done by the agent for Sirdars in the Deccan, and the political agent in the Southern Mahratta country. The wording of the Act may be as nearly as possible the same as sec. 5, Regulation 7, of 1830, and Regulation 16, of 1831. The substitution of the word Guzerat for Southern Mahratta country will be the only change necessary.* The importance of bringing the Nawab's family under the operation of the laws as soon as possible will be readily admitted, if we consider the minority of Meer Jaffur Ally's children, and the necessity that may arise, in the event of their being deprived of their natural guardians before they attain majority, of again interfering in its affairs, in which case it would be desirable that the mode of procedure should be as laid down in the Regulations. Connected with this subject, I beg to draw the attention of Government to the remarks contained in the papers of Meer Jaffur

* *Note.*—Although foreign to the subject of this Report, it may not be altogether out of place, while considering the propriety of passing an Act to confer privileges of the nature contemplated on the relations of the Nawab of Surat, if the attention of Government be called to the necessity of extending the rule to the great landed proprietors and chiefs of Guzerat, whose wealth and influence in the country is being undermined by the levelling system of our courts of justice, in the power they give to designing sowkars to impose almost at pleasure on those persons. The introduction of the words "one or more agents," in the new Act, would give the Government full power to carry out the system in any of the zillahs where it might be considered advisable.

3 May 1856.

Jaffur Ally, which have been filed in the inheritance case, and are now transmitted, along with my decision thereupon.

Vide (A.), No. 1.

59. In conclusion, I beg to submit the following abstract of the sums recommended to be paid by Government in the body of this Report.

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
Payable to *Meer Jaffur Ally:*						
Amount of expenditure incurred in maintaining the Nawab's household, &c., recommended in paragraphs 19 and 20	75,546	5	3			
Aggregate amount of pensions allotted to 94 of the relations and dependants of the Nawab, recommended in paragraph 21	22,661	–	–			
For the maintenance of Buktyaroolnissa Begum, recommended in paragraph 43	22,450	–	–			
				1,20,657	5	3
Payable to *Badsha Begum:*						
Aggregate amount of her pension, from the Nawab's death, recommended in paragraph 25				15,870	14	–
Payable to the Estate of *Shahzadee Begum:*						
Amount of allowance for herself, and aggregate pensons of 49 of the Nawab's dependants whom she maintained, recommended in paragraph 34				7,765	–	–
Payable to the Dependants of the Nawab, who maintained themselves:						
Aggregate amount of the Pensions of 52 individuals, from the date of the Governor-general's decision till payment of their pensions commenced				4,672	–	–
				1,48,965	3	3
Deduct:						
Amount advanced to Meer Jaffur Ally, by Government, as stated in paragraph 23				10,000	–	–
			Rs.	1,38,965	3	3

Detailed lists of the pensioners in Guzeratte have been prepared, and are deposited with the rest of the papers in the agent's office at Surat.

60. The prospective liabilities of Government are as follow:

	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
Life pensions sanctioned in their letter dated 22d March 1845, per mensem	1,975	–	–			
Life pension to Ameeroolnissa Begum	500	–	–			
Life pension to Meer Jaffur Ally and his children	1,500	–	–			
				3,975	–	–
TOTAL			*Rs.*	3,975	–	–

I have, &c.,
(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor of Surat.

Baroda, 3d November 1845.

(1.)

To Sir *R. H. Arbuthnot*, Bart., Agent for the Honourable the Governor, &c. &c. &c.

Sir,

31 July 1845.

WITH reference to your letter to me of the 29th March last, intimating that the Government had been pleased to allow me provisionally a pension of 500 rupees per month, and my former reply to you, I now beg to submit for your consideration the following circumstances, from which I trust you will be satisfied that the amount is by no means adequate to the support of myself, in accordance with my rank as the widow of the late Nawab.

Presuming that it is the desire of the Government in conferring pensions on the dependants and servants of the late Nawab, to sustain them as far as possible in the position in which they were maintained by him in his lifetime,

time, I may be permitted to explain the nature of the late Nawab's domestic establishment. 3 May 1856.

The late Nawab kept up several distinct establishments; first, his own personal mahel, inhabited by myself and my attendants, and Shahzadee Begum, deceased; secondly, the mahel of Meer Jafer Aler Khan Saheb; thirdly, a mahel for all persons who were dismissed by the Nawab from his own mahel, and for the dependants and servants of his late father, whom he did not retain in his own service; fourthly, a mahel for the ancient dependants and servants of the Nawab's late grandfather; and lastly, the mahel in which Meer Akbur Aler Saheb had lived with his late wife. A liberal style of living, with a large retinue of servants, was enjoyed exclusively by the late Nawab and his own mahel, and Meer Jafer Aler Khan Saheb and his mahel. All the other establishments were kept up by a regular allowance to each person, with a certain limited number of servants as mere pensioners of the Nawab, it being one of the distinguishing features of the Nawab's rank never to dismiss altogether out of his establishment those who had once entered his mahel, but, however much dissatisfied, to dispose of them by sending them into the old mahel behind his palace.

During the Nawab's lifetime I always enjoyed the consideration due to my station as his wife, and the mother of his only children, and it would now be impossible to maintain myself with any respect or dignity, though in a manner very inferior to my former state, for less than 1,000 rupees per month, in addition to the small private income derived from the houses and gardens given to me by the late Nawab, of which I trust you will be convinced on perusing the accompanying statement of my requisite fixed establishment, to which is to be added the expense of clothing and living, as well as keeping the usual festivals and holidays.

In order further to satisfy you of the correctness of this assertion, I beg to remind you that when an arrangement was made by the late Nawab with great deliberation, and without any personal favour, for the separate maintenance of the widow of his deceased father, the sum of 1,250 rupees a month was fixed for her monthly stipend, independent of other considerable allowances, and though in consequence of the unhappy quarrels and dissensions which continued between them, it may not have been regularly fixed, it not the less shows that it was then considered to be a reasonable provision for the widow of the Nawab.

It is not my intention to complain of the allowances made to M^{t} Doolhum Begum, formerly the wife of the Nawab, but who was many years since dismissed by him from his mahel, into the old mahel, under circumstances which, amongst people of lower rank, would have been accounted (as it is, according to strict Mahomedan law,) an entire divorce, by reason of the Nawab banishing her from his sight with reproach; yet, when it is explained that this lady's allowance of money and food, for herself and attendants, were only 77 rupees a month in the Nawab's lifetime, and that the whole of the other servants and attendants on the old mahel were not paid more than 26 rupees a month, and that for many years previous to the Nawab's death, none of the Nawab's own establishment had been at her service, it is wholly disproportionate to our relative position in the Nawab's lifetime to allow me no greater amount than has been settled on the M^{t} Doolhum Begum.

I trust you will excuse my taking this opportunity of bringing to your notice the situation of Boowa Ajub Bahar, a dependant of the Nawab, and to whom you have allowed a pension of no more than 40 rupees a month; but this lady was treated by the late Nawab with much respect in his lifetime, in consequence of her having borne to him an acknowledged son in the year 1238, whose birth was celebrated by the late Nawab with an entertainment to the Political Agent and the principal residents at Surat; the infant, however, died a few months after its birth, and Boowa Ajub Bahar subsequently brought up the Nawab's deceased daughter Nujeeboonissa Begum, the late wife of Meer Akbur Alee Saheb. On her death, she continued to reside in Meer Akbur Alee's mahel, and was provided by the late Nawab with an allowance and establishment of about 120 rupees per month, besides occasional presents; her present allowance of 40 rupees would, therefore, be a great and painful reduction in her circumstances.

Relying with confidence in the desire of the Government to alleviate, as far as lies in their power, the affliction that has come upon us by the death of my

3 May 1856.

late husband and the extinction of the Nawabee, I earnestly entreat that my pension may be increased to the sum of 1,000 rupees per month, to enable me to live with moderate comfort, and with respect becoming the memory of the late Nawab.

I have, &c.
(signed) *Ameerooranissa Begum.*

31 July 1845.

LIST of SERVANTS particularly requisite for the Domestic Services of *Ameeroonnissa Begum Sahib.*

Number of Servants.	Description of the People.	Monthly Pay.			Number of Servants.	Description of the People.	Monthly Pay.		
		Rs.	*a.*	*p.*			*Rs.*	*a.*	*p.*
2	Writers, one at 20 rupees and another at 10 rupees.	30	–	–	1	Cook, male	3	–	–
					1	Baker	5	–	–
					2	Grooms	8	–	–
20	Sepoys	100	–	–	1	Furrash (carpet spreader)	5	–	–
1	Jemidar	10	–	–	3	Masalchee	12	–	–
1	Havildar	7	–	–	1	Sweeper	3	–	–
2	Trumpeters	10	–	–	1	Waterman	8	–	–
2	Chobdars	10	–	–	1	Waterwoman to carry into the palace.	2	–	–
4	Etawalas (or spear carriers.)	16	–	–	1	Female hamal to carry food in ditto.	3	–	–
2	Tailors	15	–	–	2	Hurkara	10	–	–
1	Female ditto	5	–	–	1	Overseer	10	–	–
1	Peon	4	–	–		Medical expenses	100	–	–
2	Cart drivers	10	–	–		Expense of two coach-horses.	25	–	–
1	Coachman	10	–	–		Two pairs of bullocks	20	–	–
2	Kidmutgars	10	–	–	1	Prayer teacheress	5	–	–
1	Washerman	7	–	–					
1	Ditto of silk	4	–	–		TOTAL *Rs.*	544	–	–
4	Female attendants	20	–	–					
8	Palanquine bearers	50	–	–					
1	Cook	7	–	–					

3 July 1845.

SEAL.

(2.)

8 July 1845.

TRANSLATION of a Letter from *Booà Ajubbuhar* to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor.

(A. C.)

ON the 15th April last I did myself the honour of presenting my humble petition to you respecting the paucity of the sum of pension being fixed for me, with the list of provision and ready cash which I usually got during the lifetime of his Excellency the late Nawab, amounting to *Rs.* (121. 1.) one hundred and twenty-one rupees, one anna. I also spoke to you verbally on the day you honoured the palace with your visit to take evidence on the case of Meer Akbur Alee Khan; on the same occasion I also represented to you on the subject of the expenses required for the marriage of the daughter, M^{t} Wilaitee Khannin, alias Khaumbee, but am not up to this time honoured with a reply; and after your departure hence, Gokuldass, the native agent, brought me a second time the salary for the months of April and May last, but I did not receive them. To put you in mind of my distressed circumstances, I beg to trespass upon your precious time again, and to observe that I am one of the rightful persons of the late Nawab. I bore two children to him, one daughter and one son; both of them expired in their infancy. The son's birth took place on the 4th Jemadilawul 1238, A. H.; he was named Shoojaoodeen. On the occasion of his birth his Excellency celebrated a great feast; Mr. Romer, the Agent, and other European and native gentlemen were assembled in the banquet; but this child died when three months old. The dignity

dignity and respectability observed in my behalf by his late Excellency is well known to all the servants and dependents of his Excellency; Ameeroonnissa Begum Sahib has also written to your worship in my behalf. The monthly pensions fixed for the servants and dependents of his Excellency, to some of them double, triple, and fourfold than what they received during the Nawab's time, and it is owing to my bad luck, that notwithstanding my right and respectability, Government fixed one-third of what I got. This sum is not sufficient to pass my time. I beg you will fully consider my distressful case, and appoint such a sum as to be sufficient for the support of my life with my ancient honour and respectability. I beg also you will be good enough to appoint a sum for the expenses of the aforesaid daughter, and honour me with the reply of both requests; that it may be cause of justice and good name of the honourable Government. What more trouble shall I give? May the days of your prosperity be perpetual! Written on the 2d Rusuli 1261, corresponding with 8th July 1845. 3 May 1856.

(3.)

STATEMENT of the Gardens and Mooglaee Hucks in Sequestration, which have been awarded to Ameeroolnissa Begum and others, which should therefore be separated from the Nawab's Estate.

No.	Name of Gardens, &c.	Names of the Villages in which the Gardens, &c. are situate.	Annual Revenue.	To whom Awarded.
			Rs. a. p.	
1	Wujeefa Muncherjee Walla	Dubholee - -	92 5 10	Ameeroolnissa Begum, widow of his Excellency the late Nawab of Surat.
2	Keeta Seedeewalla - -	- Ditto - -	65 – –	
3	Moogul, or Afzool Bagh -	Majoorat - -	83 8 –	
4	Dada Ellahee Kallan, or Great.	City of Surat -	278 15 6	
5	Dada Ellahee Khoord, or Small.	- Ditto - -	90 – 2	
6	Nugeena Bagh, or Bhuttaee Walla.	Kuttarganin -	175 4 11	- - Heirs of Buktyaroolnissa Begum.
7	Keeta Foolwarree - -	- Ditto - -	325 2 7	-- Heirs of Nujeeboolnissa Begum.
8	Mooglaee Hucks - -	Kucholee - -	472 3 1	Heirs of Meerza Abdoolah Beg.
9	Mooglahee Hucks - -	Kosar - -	967 – 1	
10	Mooglaee Hucks - -	Burboodun -	1,010 13 3	
11	Half share in the Nakhooda's garden.	Veer - -	472 4 4	
12	Wujeefa - - - - -	Arrajun - -	79 11 9	
		Rupees - -	4,103 5 6	

Baroda, 3 November 1845.

(signed) *R. K. Arbuthnot*,
Late Agent for the Hon. the Governor at Surat.

No. 1.

TRANSLATION of a Letter from *Bucklyarooneesa Beegum Sahib*, the Daughter of His Excellency the late Nawab of Surat, addressed to Sir *R. K. Arbuthnot*, Baronet, Agent for the Honourable the Governor, dated 21st February 1844. 21 February 1844.

(A. C.)

WITH reference to your Proclamation, No. 1,025, dated 29 December 1843, notifying that all persons claiming as heirs or otherwise to participate in the estate of his Excellency the late Nawab of Surat, should within two months from that date make written application to you, accompanied by such proofs as might be necessary to substantiate their claims, I have the honour to state that the whole of the property left by his late Excellency belongs to me, as his only surviving daughter and heiress, and to request that you will be so

3 May 1856. good as to record my strong and decided protest against the exercise of any jurisdiction over it on the part of the Honourable East India Company, my firm opinion being that in sequestrating the same, and assuring the right of distributing it amongst the heirs according to Mahomedan law, the Government of India is committing a grave infraction of the Treaty of 1800, a matter respecting which I have appealed to the Home authorities.

(True translation.)
(signed) *Meer Jafuralee Khan.*

(True copy.)
(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Paper given in by Mr. *Ayrton* on the part of Meer Jafferallee.

7 May 1845. The Agent of the Honourable the Governor, &c., having requested me to lay before him a statement of the grounds of the claim of my late wife, Buckly-arooneeasa Beegum, to be the sole heir of the late Meer Afzaloodeen Khan, titular Nawab of Surat, I beg to submit that the right of inheritance to the deceased must be determined entirely and exclusively by the rules or laws by which the deceased was regulated at the time of his decease, it being a universal principle that the inheritance of a deceased person is governed by the law, state, and condition of the deceased, and not by the law, state, or condition of his surviving relations.

2. It is therefore necessary to determine what rule or law the deceased was subject to. This, however, can only be ascertained by examining the past history of the deceased's family, and considering the exact position he held at the time of his decease, but as all these circumstances have been already set forth at length in the memorials to the Government and the Honourable the Court of Directors, they are only recapitulated here briefly.

3. The late Meer Afzaloodeen Khan was a lineal descendant of Meer Menoodeen Khan, by his wife, Willaitee Khanum, who was the daughter of Beglur Khan, formerly the Nawab of Surat and its dependencies. In the year 1759, the Nawabship being contested by others, Meer Moocenoodeen Khan entered into a treaty with the Honourable East India Company, constituting himself the Nawab of Surat, in which they engaged to support him in consideration of his conceding to them certain advantages. In the year 1763 Meer Monenoodeen Khan died, and his son, Meer Hufezoodeen Khan, succeeded to the Nawabship, and shortly afterwards availing himself of the decline of the Mogul empire, broke off all communication with the Mogul Sovereign, and became wholly independent of that power, but continued allied to the East India Company by the Treaty entered into with them by his father. The Nawab Meer Hufeezoodeen Khan dying in the year 1790, was succeeded by his eldest son, Meer Meezamoodeen Khan, by right of inheritance, as acknowledged on that occasion by the Bengal Government. Meer Meezamoodeen Khan died in the year 1799, leaving Meer Nusroodeen Khan, his brother and heir, his successor to the Nawabship of Surat. Up to this time the family had been *de facto* Nawabs of Surat, exercising despotic power over their relations and dependents, and the inhabitants of the city of Surat, excepting those only who were subject to the government of the East India Company, under their Treaty with Meer Moeenoodeen Khan. It is, therefore, maintained that it was competent to the Nawab to regulate the succession to the property of themselves, their relations, and dependents; for it is to be observed that the succession to property is not governed by any moral law, or principles of natural justice of universal application, beyond a general regard for the kindred of the deceased, but is altogether arbitrary in denoting what particular kindred shall be heirs, differing in almost every country, and generally based upon the constitution of society or the policy of the State.

4. In the year 1800 the Honourable the Governor of Bombay, whilst his Government had admitted the right of Meer Nusroodeen Khan to inherit the Nawabship from his brother, yet in obedience to the orders of the Bengal Government, compelled Meer Nusroodeen Khan to surrender the Nawabship in exchange for a perpetual annuity; but, at the same time, by the third article of

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of the agreement entered into with the East India Company, it was agreed that the Nawab should be treated on all occasions with the same respect and distinction as his predecessors; and in the seventh article a portion of his rights were reserved to him, as follows: "And in complaints brought before the "courts of justice, in which it shall appear, either by the application of the "Nawab, or the representation of the defendant, at or before the time of giving "in his or her answer, or by the petition of the complainant, that both parties "are relations or servants of the Nawab, it is agreed that such parties shall, "in the first instance, be referred for justice to the Nawab, or to any person "whom he may appoint to dispense it. Any complaint against the relations "or immediate servants of the Nawab, by persons of a different description, "shall, in the first instance, be made to the chief civil servant at Surat, who shall "refer it to the Nawab, who hereby engages to order the dispute to be referred "to a proper arbitration, the Nawab engaging to bring it to a direct issue, and "to carry the sentence or award, if unfavourable to his relation or servant, into "immediate execution."

5. Meer Nussroodeen Khan, though by this agreement divested of the Nawabship of Surat, and reduced to a subject titular Nawab, was still left, both by the Treaty and by the Regulations of Government, which extended the provisions of the agreement with the power of regulating the affairs of himself, of his family and dependents, and his right and power to regulate the succession to the property of himself and family therefore still remained.

6. Meer Nussroodeen Khan, having died in the year 1820, was succeeded by Meer Afzaloodeen Khan in the title and immunities of Nawab of Surat, under the articles of agreement above-mentioned, which he enjoyed up to the time of his decease.

7. I now beg to state in what manner the succession to property has been regulated in the family of the late titular Nawab.

8. The property of his ancestors and family had during the several generations above-mentioned devolved entire and undivided from one to another without question; but in the year 1820, upon the demise of Meer Nusroodeen Khan, his widow, Zeavoneera Lailee Begum, claimed from her son, Meer Afzaloodeen Khan, a share of the property of her deceased husband, according to the precepts of the Mahomedan law, and upon that occasion a writing was sealed by the Nawab and Begum, and counter-sealed by Buckshee Meer Sudiodeen, the father of the Buckshee Meer Mynoodeen, and Meer Sumsoodeen, the father of Meer Cumroodeen, the only relations, though remote, of the Nawab, in which writing is the following clause: "As above detailed, the eighth part "that has been written out to me by my beloved son, the Nawab, is merely "in consequence of his regard for my satisfaction and pleasure. Because such "division never hath taken place in this family during the five generations "past; and henceforth, if any of the relatives claim a share or an estate of a "deceased or living person, his claim is to be entirely null and uncognizable, "after my brother, Meer Sudroodeen Khan Sufterjung Bahadoor (the buckshee), "having consented to these terms; my beloved son agreed to give the eighth "part of the division to me; also my brother, Meer Sudroodeen Khan Sufter-"jung Bahadoor, has not and shall not have any claim upon my beloved son for "a share or an estate of a deceased or living person."

9. This clause is confidently relied upon as an acknowledgment by all parties; first, that the custom as therein stated existed; and, secondly, as a declaration of the rule or law by which the titular Nawab and his family were governed, binding both on them and himself, and therefore as the rule by which the succession to his property should be determined; for it is submitted that the Nawab had the power of making rules for themselves and family in the matters left under their control, in the same manner as the Government of Bombay had for the other inhabitants of Surat, to the extent of its authority.

10 And it is to be observed, that this power is not in the least degree affected by any question whether the Nawabs were hereditary governors, or were appointed by the power of the British Government, or whether that Government was or was not justified in compelling the Nawab to enter into the new agree-

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ment, or whether it is now at an end; but the right resulted from the *de facto* independence of the Mogul authority, and of any position of the law enjoyed by the Nawabs, which was always acknowledged by the British Government, and was reserved by their agreement of 1800.

11. It is further shown, that the Nawab considered himself to possess the power of regulating the succession to his property by the letter which he addressed to Meer Surfrozalle on the marriage of his daughter, and which is, in effect, a solemn declaration that his property was, on his decease, to remain entire and undivided.

12. The existence of the custom above mentioned is however proved, not merely by the declaration of its existence, but by several instances in which it has been observed in the family, and particularly in the case of the succession to the late Buckshee Nasmoodeen Khan, and to his wife, Khanum Sahib, on whose decease their respective estates were not distributed amongst their heirs denoted by Mahomedan writers in the law of inheritance, but were possessed exclusively by their son, Buckshee Meer Sudrodeen Khan, the father of the present Buckshee, though, according to that law, the deceased Nawab, Meer Afzaloodeen Khan, would, through his mother, have been entitled to a share in each of thair estates, which were of great value, and again on the decease of Meer Tajodeen, the brother of the Buckshee Meer Sudrodeen Khan, the Nawab would have been entitled to a share in the estate of Meer Tajoodeen; but this estate was also exclusively possessed by the Buckshee.

13. It is therefore manifest, that any attempt now to subvert the acknowledged usage and rule of the family, would be productive of the greatest injustice, for the only other rule by which the agent could be guided would be the Mahomedan law of inheritance administered in the Zillah Courts, but by that the Buckshee and his cousin would become entitled to share in the estate of the deceased, Meer Afzaloodeen Khan, to the exclusion of his own daughter, whilst Meer Afzaloodeen Khan, in accordance with the acknowledged rule of the family, neither claimed nor received any share in the estate of the ancestors or relatives of the Buckshee.

14. It is, no doubt, known to the agent, however much the laws of inheritance recorded by Mahomedan writers are respected amongst Mahomedans in general, yet these laws are variously stated by different authors, and that the system adopted by the two preceding sects of Mahomedans differ in a very material degree, the Imameeya doctrine recognising the right of a daughter to the whole inheritance, in preference to all collateral kindred. The law of the text writers is also abrogated by custom, likewise by the law of the estate, as on the coast of Malabar, where the usual rules of succession are altogether disregarded by Mahomedans; it is a principle of Mahomedan law, as laid down in the Ishbawn Nazzair, that custom shall prevail against the rules of the law.

15. I therefore respectfully insist, that the late Buchlyaroo Neesa Beegum Sahib became the sole heir of the late Nawab Afzaloodeen Khan at the time of his decease, and beg to protest against any other person than those now claiming under her taking any portion of the deceased's estate.

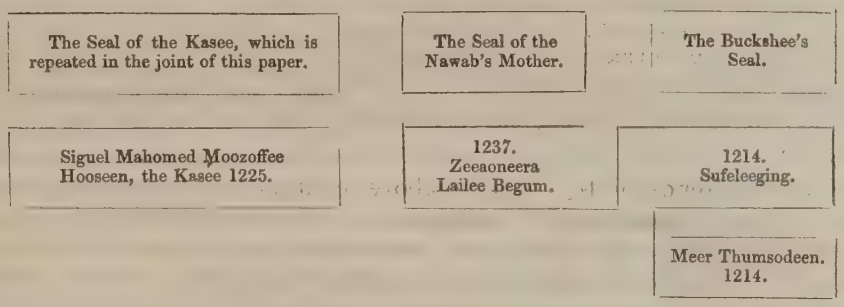
16. I also beg to protest against the present proceedings being deemed or taken to be any acquiescence on the part of myself and the heirs of the late Meer Afzaloodeen Khan, in the right or power of the Government or its agent to take possession or dispose of the property or estate of the late titular Nawab Meer Afzaloodeen Khan without the consent of his heirs, or any acquiescence in the determination of the Government to withhold from his heirs the payment of the permanent annuity mentioned in the articles of agreement.

Surat, 7 May 1845. (signed) *Jafeerallee.*

(True copy.)

(signed) *R. K. Arbuthnot,*
late Agent for the Hon. the Governor at Surat.

TRANSLATION of the Deed of Acquittance passed between Meer Afzaloodeen Khan Kumrood Dowlah Hushmab Jung Bahadoor, the late Nawab of Surat, and his Mother, dated 5th December 1820, A.D., bearing the following seals : 3 May 1856. 5 December 1820.


The Seal of the Kasee, which is repeated in the joint of this paper.
The Seal of the Nawab's Mother.
The Buckshee's Seal.
Siguel Mahomed Moozoffee Hooseen, the Kasee 1225.
1237. Zeeaoneera Lailee Begum.
1214. Sufeleeging.
Meer Thumsodeen. 1214.

THE cause of writing these lines is as follows :

That I, Teeaooneeva Lailee Begum, give in writing to this effect : that between my beloved and fortunate son, Meer Afzaloodeen Khan Kumrood Dowlah Hushmeel Jung Bahadoor (may his life and dignity perpetuate), and myself, there existed a misunderstanding, which I have with my will and pleasure, and without being compelled or forced, settled and adjusted according to the under-mentioned items : this voluntary settlement has been adjusted through the medium of my brother, Meer Sudrodeen Khan Sufeleigung Bahadoor on my part, and Meerza Abdoolah-beg, the confidential and Dewan Alanarane, on my beloved son, the Nawab's part. These few words, therefore, have been written to the effect of the arrangement between us :

1. I am to take the jewels, clothes, and the effects and assets which are my private property, and the bonds of which are in my name, and the effects of my dowry, which are in my sole possession, and to receive such of these that are in my beloved son's possession. I am not to receive the one-eighth from the arms, the manly jewels, chesses, &c. belonging to the estate, and from all the remainder I have to receive one-eighth. I have to make over to my beloved son his effects, chesses, jewels, &c. of the dower from Salih Chalubbee.

2. My son is to pay me the amount of 1,250 rupees per month for the maintenance of myself and dependents from the sum of 8,000 rupees he receives from the government of the Honourable Company.

3. From the property of the ancestors and that of a Nawab Kootor Dowlah the late, of which I have possession, I have to give my beloved son the seven parts, and take one-eighth to myself.

4. I have my free power over the effects and property of my own. I may sell or give them as a donation, as I please, or liquidate my debt by their means.

5. I may send for any of my relations and dependents, if I wish ; my brother, Incer Sudroodeen Khan Sufdeigung Bahadoor, and his children, and my nephew, may come to me and live with me, and other female relatives may come to me, and I may inquire after them.

6. I may go and come to and from the gardens and houses of my relatives.

7. I am to have the Palkee carriage and retinue for my own use when I want.

8. I am to employ the under-mentioned number of sepahees, servants, foot-men, and writers to collect the revenue of my property, provided they are not inimical to the estate of my son :

Sepahees	20
Servants	4
Footmen bearers	4
Writers	2

9. My servants, farmers, and tenants are to be registered in the records of my son's government, in order that they may not be excluded from the number of

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his servants, not amenable to the Court of Adaulut; their differences in the Adaulut are to be responded by my son.

10. The eighth part of the residing palace being insufficient for my abode, I have taken several parts of my son's from a separate mansion; that is to say, the place which is in my possession up to the date of this document on this condition, that the palace now occupied by my son's wife, and by Meer Kheroodeen, my late son's wife, are to continue in their permanent possession. Besides the outer houses, together with guard and stable, &c., are to be in my son's possession as before; and for the seven parts (in this article) taken by me, I have to give over to my son, and another place from the places of my purchase of the 30,000 rupees, viz:

The garden of Bair of Nakhoda.
The village of Barode.
The mogli and vuzifee of the village of Bumrolee.

11. My son is to pay me annually two instalments, after adjusting the accounts the eighth of the revenue of the property, and the farms of gardens, &c.

12. The effects, jewels, chesses, &c., which are now in my possession in the palace are to be under the lock of both parties, until its division is made in every place.

The extract para. has already been forwarded to the Government Agent in a letter dated 27 August, and to the Hon. the Governor on 31 Aug. 1844.

13. As above detailed, the eighth part that has been written out to me by my beloved son, the Nawab, is merely in consequence of his regard for my satisfaction and pleasure; because such division never had taken place in the family during the five generations past, and henceforth if any of the relatives claim a share on an estate of a deceased or living person, his claim is to be entirely null and uncognisable. After my brother, Meer Sudrodeen Khan Sufdeigung Bahadoor (the Buckshee) having consented to these terms, my beloved son agreed to give the eighth part of the division to me; also, my brother, Meer Sudiochen Khan Safdeijung Bahadoor, has not, and shall not have any claim upon my beloved son for a share on an estate of a dead or living person.

14. I have to give over to my son all the documents of the State, the treatises, inheritable letters, and bonds of the garden places, and wirifas, and the records of the present and past, &c., &c., &c.

15. These mutual documents, sealed by both parties, are intrusted to a soukhar; they are to be taken by both when the above agreement is carried into execution.

Written on the 20th of the month of Rubiool Awal 1238, corresponding with the 5th of December 1822, A. D.

(The counterpart is similar to the above, except the required difference in the name of the parties, and it has the Nawab's seal, instead of the Begum's).

Translated by me from the original.

(signed) *Zoolfullah Khan.*

(True copy.)
(signed) *R. K. Arbuthnot,*
late Agent for the Hon. the Governor at Surat.

SECOND PAPER given in by Mr. *Ayrton.*

2 July 1845.

THE disposal of the estate of the late Nawab involves questions of considerable importance, and in some respects so novel and anomalous, that it may be desirable to investigate them at more length than has been done in the memorandum already submitted to the agent of the Honourable the Governor, &c.

1. It should be clearly understood, in the first place, in what relation the agent stands to the estate of the late Nawab, in order that it may be known upon what principles it is to be dealt with.

2. The

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2. The Government of British India is invested with two functions, which are sometimes so confounded together as to observe for a moment the very clear distinction between them; the one has relation exclusively to foreign states not part of the British dominions, and the other to the British territory, vested in the East India Company in trust for the Crown, and to its inhabitants.

3. A knowledge of the constitution and powers of the Government being generally deduced from ancient writers on its laws and constitution, and its history, were apt to form views and opinions of the present constitution and power of the Government of India, from the history of its acquisition by the India Company, and of the ancient native Governments; but there is an important distinction between acquisitions of territory made through the East India Company and those made directly by the Crown. In the latter case, the Crown succeeds by virtue of its prerogative to all the power and rights of the former Government, and the ancient laws and constitution remain in force until altered by the Crown; but this prerogative has never been transferred to and could not by the constitution of England be vested in the East India Company even by the Crown itself. The Indian Government of the East India Company does not succeed to any of the despotic powers or authority of the native princes to dispose of persons and property at pleasure without regard to law or its administration. The Company and its servants have no inherent power over the rest of the Queen's subjects, the native inhabitants of this country.

4. In relation to foreign states, the Government and its officers may no doubt exercise arbitrary power, in which they are free from the control of the municipal law; nor can the propriety of their acts be investigated in any court of justice either in England or in India.

5. In relation, however, to the British dominions in India, they have no power whatever but that which has been conferred upon them by the Legislature; no authority whatever can be exercised by any person in India which is not derived from an Act of the Imperial Parliament.

6. These Acts alone must then be examined to ascertain the constitution of the Government and the extent of its powers, and on referring to them it will be found that, in analogy to the constitution of England, the Government cannot exercise any direct or immediate discretionary control over the persons or property of any of the inhabitants of the British territories, except in certain particular cases, in the manner prescribed in the Acts of Parliament.

7. The power of the Government is, in the first place, limited to making laws for the good order and government of the country, and secondly, to carrying these laws when made into effect; though the laws might be so vague as to be perfectly illusory if Parliament chose to tolerate such an exercise of the power conferred by it, yet, whether precise or equivocal and uncertain, a law must first be made conferring authority over the person or property of the subject before any power can be exercised, and the law being once made, it becomes as binding on the Government and its officers as on the meanest subject; the one can no more infringe it than the other, and for every infraction they are alike responsible to a legal tribunal, whether in this country or in England, and for any injury to person or property, when not protected by the provisions of the law, they are liable either to civil or criminal proceedings.

8. To apply these principles to the nawabship of Surat and its dependencies, it must be determined at what period the country became part of the British dominions, for then the power of the Government became limited by law. It would seem that previous to the Treaty of 1800, the British Government regarded Surat as a foreign territory, in which they exercised power under the firman from the Emperor of Delhi and the Treaty of 1759, but still only a power of control over the existing native Government; this control, however great, being indirect, could not amount to an assumption of the territory in sovereignty, whilst the native Government remained; the agreement of 1800 was an entire resignation of the whole city and territory, and the sovereignty of them, without reservation; not even was the palace of the Nawab reserved to him as independent territory; and he then became a mere privileged person, with certain powers of making and dispensing laws for a

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certain class of individuals; he could not thence be regarded as an independent prince; for there can neither be a king nor an independent prince without a kingdom or principality; the territory being ceded to the British, nothing remained but an abstract personal right and privilege under the sovereignty of the British Government.

9. It may be collected from the published despatch of the Government of India to the Bombay Government accompanying the Treaty of 1800, that the Government of India intended that the position of the Nawab should be far lower, and his authority much less, than it was allowed to be by the Government of Bombay; but the articles of agreement were evidently of that nature, that the moment the Nawab signed them, he was at the mercy of the British Government; he had given up his independence by the second clause, and the seventh clause leaves to him only the power of governing himself, relations, and servants in subordination to the British Government; in short, the Nawab was in the same position as regarded his future government as the people of Surat would have been in, if they had themselves made an agreement to surrender the city; they would have been compelled to rely on the good faith of the Government to respect their agreement, but the Government could not the less have had the legal power (irrespective of moral right) of making a law at variance with the agreement; the ultimate law by which the people would have been governed must have been that made for them by the Government in the exercise of the power vested in it by Parliament; so the power of the Nawab after signing the agreement, and having become subject, was not derived from the agreement of the East India Company, but from the regulations of Government made to carry it into effect. The agreement was not a treaty, for that is a contract between two states to regulate their relations, but it was a surrender and a release of a claim on the part of the Nawab, and a promise on the part of the East India Company for their treatment of him when he became a British subject, and a contract for the payment to him and his heirs of an annuity.

10. The regulations made for the Government of Surat declare the law for all the inhabitants of the place, except for the Nawab, his relations and servants, who are exempted from them by express provisions in fulfilment of the agreement. It is then obvious that as soon as the Government declare that there is no longer any Nawab, it at the same time declares that there is no longer any person exempt from the regulations, and that the Government could not possess themselves of the property of the late Nawab after his decease, whilst they determined, as they have done, that his relations cannot continue in the enjoyment of their privileges. On the Nawab's decease, his property vested in his heirs, who, if the exemption from the law was at an end, could only be deprived of it by the course laid down by the Regulations. The Government had no authority whatever to interfere; the functions of their agent ended with the Nawabship; the Government having, however, forcibly dispossessed the daughter of the late Nawab of the property, her heirs can only look to the Government to make them every amends in its power, by disposing of the property in the same manner as it would have been disposed of by the parties themselves, and by placing them in the same position they would have been in, if Government had not interfered, and by protecting them as effectually as they would have been able to protect themselves, if they had been in possession; it would be no indemnity to the heirs of the widow to restore the property to them now, after the lapse of this time, and after claims had been incited and stirred up by proclamation; the heirs for the present trust to the Government to relieve them from the difficulties in which they are placed, with a full measure of compensation.

11. In order, however, to determine the questions affecting the Nawab's estate, it should be regarded as the estate of a person dying out of British India, it being in fact that of a person exempted from the laws in force in that territory.

Writers on the conflict of laws, declare that the estate of a deceased should be distributed according to the law of the place where the deceased was domiciled, solely in consequence of that law being considered to be, and in fact always being, the law by which the deceased himself was governed; they look to the law of the person of the deceased as that by which his personal effects must be distributed; they take no note of the law which his relations may be subject to before or at the time of his death; it is his law, and not theirs, by which his

estate

estate is administered in this country; all estate and effects are personal, there not being any texture or law attaching itself to the land, and governing its descent in the hands of every possessor, as in England and other states where lands would be inherited alike by Hindoos, Mahomedans, and Christians.

12. A court of justice administering the estate here would first have to ascertain the law of the deceased, by referring to the ordinances, if any, or the unwritten laws, as proved by oral testimony, by which he was governed; but in applying that process to the present inquiry, the habits of law and order which all British officers acquire, and their only recognizing laws informal, statutes, ordinances, and permanent rules of government, tend to create a prejudice against acknowledging a rule or law, of which the existence is to be proved by oral testimony of unsolemn acts, or of a mere declaration of arbitrary will; but it is not the less imperative on them to regard the acts of a privileged native, as they would be regarded by natives themselves, in order to administer substantial justice; but even the laws of some well-ordered states are only to be learnt from an investigation of the decisions of their courts of justice, depending upon the evidence of printed reports, and from other sources more or less precise or perfect; or the particular question at issue, if novel, may have to be resolved by the mere opinions of men considered to be well versed in a knowledge of the laws of the state. Is not the declaration of the Nawab, with the seal of himself and family, a declaration of the law, or a decision as solemn as may be found in any Oriental state? Is it not an ordinance for the family, made with every possible formality?

13. The late Nawab, it cannot be denied, was invested with arbitrary power, in the exercise of which he could, of course, be controlled by the British Government; yet not by any existing law, but by their advice and remonstrance, to be enforced by the power of bringing him under the control of the local court and its law by new regulations, for which any abuse by him of his authority would have been a sufficient justification. It is said by Matisqueen, that an absolute prince must always have the power of regulating the succession. It would seem to be inherent in the very nature of his power, to flow as a natural consequence from an entire dominion over himself and his property; but the same principle is equally applicable to an absolute ownership of property by private persons, as at this time in England every subject has the power of making his will. Until lately, the slightest declaration of the intention of the deceased, even a letter, constituted a will; no formality was essential; the courts require but to be satisfied of the deceased's intention; all forms have been superadded by positive law, and all restraints upon the power of making a disposition of property seem to spring from positive prohibition of the ruling authority.

14. If the deceased could have disposed of his property at his pleasure, and without forms, in his lifetime, he must also have had the right, unless restrained by law, imposed by some superior authority, of making a rule for its disposition, to take effect on his death. It is true that his power to enforce his will died with him, but looking only to a right, and not to an appeal to physical force, the Government is bound, by analogy to the proceedings of every judicial tribunal, to respect this right, by assuming, as it were, that the deceased was still alive, disposing of his property himself according to the expression of his intentions.

15. The will, or the expression of the intention of the Nawab, that his property should go to his children, was, from there being no special code of law, from his being despotic over himself and his family, not only a testament to take effect on his death, but a positive law, so long as it was unrevoked, as much as any part of the Bombay Regulations is a law for the other inhabitants of Surat at the instant of his death, it was the law to which his property was subject. The power of revocation has not survived to the Government, it died with the Nawab, who alone had the power of making and revoking rules for himself and family. The case, after his decease, became similar to that of a subject of a state who dies just before a new law of inheritance is made, or before the state passes from one Sovereign to another. The new order of things is inapplicable to a succession which vested in the heirs at the instant of the deceased's death, though they may have been kept out of possession of their inheritance until after the new laws

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are in force. The case will be decided upon the old, and not upon the new law.

16. It will, perhaps, be admitted, that if the Mahomedan law of inheritance, as it is called, did not exist, there would be no question but that the daughter of the late Nawab would be entitled to succeed to his property. It is confidentially asserted that the Mahomedan law of inheritance has never been so respected as to make it binding on Mahomedans, without proof that it has been adopted as the law of the state; nor can it be applied to this case without proof that it has been recognised by the Nawab as the law of inheritance for his family; but the evidence on the contrary is conclusive, that it has been expressly repudiated. This question is not to be resolved by ignorant Mahomedans, who have an interest in the prejudice, in upholding the religious character of their law, in the face of this Government, but by writers of extensive learning and deep research. It is known that the Mahomedan law of inheritance is based upon some directions in the Koran, not constituting a perfect law of inheritance, but, as explained by Sale in his Introduction, "principally designed to abolish "certain practices of the pagan Arabs, who used to treat widows and orphan "children with great injustice. To prevent such injuries for the future, Mahomed "ordered that women should be respected, and orphans have no wrong done to "them." The few rules in the Koran merely prescribed that shares should be allotted to them, but it is silent respecting the inheritance of the residue of the estate of a deceased. Sale further remarks, "Notwithstanding the Koran, by "the Mahomedans in general regarded as the fundamental part of their civil "law, and the decisions of the sonnas among the Turks, and of the imams "among those of the Persian sect, with the explication of their several doctors, "and usually followed in judicial determination, yet the secular tribunals do not "think themselves bound to observe the same in all cases, but frequently give "judgment against those decisions, which are not always consonant to equity "and reason; and therefore distinction is to be made between the written civil "law as administered in the Ecclesiastical Courts, and the law of nature, or "common law (if I may so call it), which takes place in the secular courts, and "has the executive power on its side." This remark is confirmed by other writers, supported by history, and present practice and custom, and the disregard of the Koran in this particular is accounted of little moment even by Mahomedans, who consider the observance of that part of the Koran alone which treats of matters of faith and religion as really imperative and of vital importance.

17. It may be supposed that any custom contrary to the text-writers who have framed the Mahomedan Law of Inheritance, must be very clear, general, and of long continuance; but the doctrine of Mahomedan writers, that custom should be regarded, is much more extensive, and applies even to the custom of families. It would seem that Mr. Duncan, when framing the Regulations at Surat in 1800, must have been made aware of the peculiar customs of some families in this very particular; for by Section 14 of Regulation 2, it is ordained that suits shall be decided by the laws of the Koran with respect to Mussulmen; but with respect to succession, the judge is to endeavour to ascertain whether the parties have been regulated by any general usage, or by any particular usage of the family of the defendant, and to consider, in his decision, the right due to the evidence of it, and also to inquire as to any customary rules of the country at variance with Mahomedan text-writers, and to be at liberty to adopt it in preference. It is, therefore, probable that at Surat the law of text-writers was at that time known to have been disregarded in many respects by the native tribunals; and in the Regulations of 1827, which being of more general application are also more general in their terms, the usage of the country and the rules and usages of sects and castes are to be respected before Mahomedan or Hindoo law writers. In fact, by Regulation 5 of 1827, the judge is only to revert to the law officers, where he find sthe case depends on the peculiarities of Hindoo or Mahomedan law, and not upon that established by usage. It therefore appears, that, even in the Zillah Court, a custom, as such limited to a family, ought to be respected when administering the regulations of the Court itself; and much more must this be so when the Court is called upon to ascertain under what rule or law a foreigner, or a person not subject to the tribunal, one of a single family has lived and died. However simple and expedient a course,

course it might be to call in a Mahomedan to decide the present question, yet the principles of right and justice, however difficult to apply, should be referred to this expediency, which would work the greatest injustice. It would let in persons to share in the deceased's estate who have availed themselves of a rule to preserve to themselves their own estate undivided, and who have by virtue of it withheld from the deceased and his family the share to which he would otherwise have been entitled. Before any share could be conceded, it would be at least necessary to make the claimants account for the estates which they have retained to themselves.

If the reversal of the rule of the family is to be made retrospective, as it would be, to admit collateral claimants to the Nawab's estate, then it must be so for all time past, and to the fullest extent; the result of which is, the Buckshee must account not only for the properties of his ancestors, but for a portion of the permanent annuity he receives from the Government; but it is contrary to every principle of justice to permit him to dispute a rule of which he is at this moment enjoying the benefit.

18. It may be added that any decision of the question of the succession to the Nawab's estate upon the principles above contended for, would be wholly irrespective of the claim of his heirs to the annuity, or to the title of Nawab; for that must depend solely upon the construction of the agreement of 1800. No act of the Nawab or of the Government subsequent to its execution could affect or explain the construction of the agreement itself, if there be to any extent ambiguity in the term "heirs," used in the 4th clause, it can only be resolved by ascertaining the intention of both parties at the time the agreement was signed, from the negotiations which led to that result. The question would be simply, whether it was intended that the pension should be paid to the issue male of the Nawab only, as now declared by the Government, or whether the Government did intend to give a security for an honourable provision to the Nawab and his family and descendants, from generation to generation, and to become bound in perpetuity to the support of the Nawab and his family, as represented by the Honourable Governor Duncan to the Nawab's minister four days before the agreement was signed; but any further discussion of this subject is abstained from on the present occasion.

The above paper was given in by Meer Jaffer Allee in the course of the inquiry, without his signature or attestation.

(signed) *R. H. Arbuthnot*, late A. G.

To Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, &c.

Observations submitted by Meer Jaffer Allee Khan, Saheb, respecting the Papers lately delivered by Meer Moenooden Buchibee and Meer Kumrooden to the Agent.

No explanatory memorandum having been delivered by the Buckshee with his papers, his own application of them to the matter in question is somewhat uncertain.

The Papers are as follows:

1. The Buckshee's answer to observation on the part of Meer Jaffer Allee Khan, Bahadoor, regarding inheritance. Kumrodeen's answer is similar, as also Doothem Beequee's.
2. The Buckshee's and Kumrodeen's statements of relationship.
3. Genealogical bibles, showing the relationship of the Buckshee and Kumroodeen to the Nawab.
4. A deed showing a distribution amongst the widow and daughters of Suffler Khan, a Nawab of Surat, before Meer Alcham obtained the
5. Kumroodeen's petition to the Judge at Surat, claiming inheritance on the estate of Khanane Sahib, Jungmoodeen Buckshee's wife.
6. Table showing the mode in which Khanum Sahib's inheritance ought to be divided.

3 May 1856.

7. Deed of discharge regarding the suit for inheritance from Kumroodeen to the Buckshee.
8. The deed of settlement from the Buckshee to Kumroodeen regarding that inheritance.
9. Two deeds of acquittance from Kumroodeen and his father to the Buckshee regarding all claims of inheritance.
10. A receipt passed by Kumroodeen's father to the Buckshee.
11. Deed of acquittance on the part of Buckshee's aunt to his father.
12. Release on the part of Kumroodeen's aunt to his father.

The first paper, being the Buckshee's reply to meet Alee Jaffar Khan's observations on the heirship, distinctly admits it to be true that the statement in the observations that there had been no division of inheritance, &c., for generations in the Nawab's family, and that the deed of settlement between the Nawab and his mother and the late Buckshee and Kumroodeen's father was correct, and none of the other papers are inconsistent with that fact.

With regard to the deed of partition of the property of Sufter Khan, who, however, was not of the late Nawab's own family, but was the father of the wife of the Tuckroodeen, the son of Aber Achmed (he himself was not a party to the deed, but Meer Tuckroodeen was a party as agent, for and on behalf of his own wife); it is important to observe that Sufder Khan estate was divided amongst his widow and daughters only, and not amongst his collateral male relations. This shows, therefore, a disposal of his estate in a manner contrary to Mahomedan law, and more nearly approaching to that contended for by the late Nawab's daughter; that is, to female descendants, to the exclusion of this suit, collateral kindred; and also that it was then the custom in noble families so to dispose of property.

In the deed of distribution it is stated they were his heirs; in which case the whole estate would be divided amongst them. The principle of a division is, however, clearly recognised.

(signed) *R. H.*

The several releases of Kumroochens, and his father and aunt, and of the Buckshee's aunt, show that in the Buckshee's family claims have been made by one member of it or another, for inheritance; but all these releases, at the same time, show that none of the parties succeeded in having any division, in fact, made of the inheritance to which the papers refer, but that they abandoned their claims for small life pensions, &c., even without any consideration.

The principle of distribution is however, clearly recognised by the compromise of their claims. Meer Kumroodeen now enjoys a share of that Buckshee's pension.

(signed) *R. K. Arbuthnot.*

The Buckshee, however, has not shown that either he or his father divided the Government pensions or the family property amongst all their brothers and sisters.

In the paper of the divisions of Khanem Sahib's property, the Nawab is entered as a sharer; but that paper appears to have been prepared by Kumroochen himself, when he filed his suit against the Buckshee, without the Nawab's privity; the Nawab never did receive the share, nor is there any proof offered that he did so; if he had, his receipt or release would have been produced; this is, therefore, a strong corroboration of the fact, that there was no division of inheritances between the Buckshee's and the Nawab's family.

On the whole, therefore, these papers strengthen the assertion that what is called the Mahomedan Law of Inheritance was not universally acknowledged, but was disregarded amongst many tribes and families as inconsistent with the civil policy and the manners and habits of the people.

Surat, Palace of the Nawab,
2 July 1845.

(signed) *Jafur Allee.*

(True Copy.)

(signed) *R. H. Arbuthnot,*
Late Agent for the Honourable the Government,
Surat.

No. 2. 3 May 1856.

Claim of Ameeroolnelsa Begum.

The agent of the Honourable the Governor, &c., having required all persons claiming to be the heirs of the late Nawab Meer Afzaloodeen Khan to make known their claims to him, I beg to state, that the late Nawab at the time of his decease left me his widow, and Buchlegaroolneesa Beegum, his daughter, him surviving; but I am well aware of the intention of the late Nawab, that all his estate should pass entire and undivided into the hands of his daughter, according to the custom observed in his family, and I trust that the agent will give effect to that intention, by delivering over the estate to the heirs of the late Bushlegaroolneesa Begum, in which case I do not desire to make any claim on it, but consider myself only entitled to be maintained acording to the usage of the family of the Nawab: should the agent, however, decline acting in this manner, and proceed to divide the estate of the late Nawab amongst his heirs according to the Mahomedan law, then it will be incumbent on the agent to allot to me the share of a widow, which, if it should please the agent to deliver to me, I shall receive and dispose of according to the late Nawab's intention. 9 May 1845.

Seal of *Ameeroolneesa Begum.*

Surat, 9 May 1845.

(True copy.)

(signed) *R. K. Arbuthnot,*
Late agent for the Honourable the Governor at Surat.

No. 3.

Translation of a Petition from Badshah Begum, Widow of the deceased Nawab Meer Afzaloodeen Khan, dated 27th, and presented to the Agent on the 28th February 1844.

Your humble petitioner, after the decease of her late husband, Meer Afzaloodeen Khan, presented several petitions to the honourable Sirkar. Now a proclamation has been received, informing her that all persons having claims upon the estate of the late Nawab should represent the same within the period of two months, after which they will not be admissible. Your petitioner consequently repeats that she is an heir of the late Nawab, in proof of which, it is only requisite to state she was married to him, and a married wife according to the law is an heir, as is not unknown to lawyers. The proof of her marriage is extant on the records of the Sirkar. This point was formerly investigated by the high in rank, Mr. Elliot, and her claim to share in the inheritance of her husband clearly established; she now, therefore, claims her share in the gold and silver, precious stones and jewels, vessels of gold and silver and copper, and which have been left by him, as well as his clothes, property, mansions and gardens, lands, mooglaees, jagheers, including the jagheer of the village of Stancote, &c. Your petitioner further makes claim as an heir of the Nawab to her share of the annuity of one lac of rupees which the Nawab received from Government, together with the share of the one-fifth of the surplus revenues of the city of Surat, the same being the Nawab's private property, under the 4th and 5th articles of the Treaty of 1800 A. D., as a consideration of the circumstances of the case will make quite clear; for before the Treaty of 1800, your petitioner's father in law Meer Nasroodeen Khan the late, was in possession and occupation of the whole of the revenues of the city of Surat and its dependencies, with full power to bestow them upon whomsoever he pleased, he being the absolute proprietor thereof. The late Nawab's income from this source cannot therefore be regarded in the light of a pension, but as private property. I hope, therefore, you will cast the glance of mercy upon the weak and oppressed, and cause the share of your petitioner to be given to her from the whole of her husband's estate, according to the sacred law, as well as the share in her husband's annuity, to which she is entitled. It was incumbent on your 28 February 1844

3 May 1856.

petitioner to have the honour of representing her case to you; she has therefore done so. May the days of your happiness be increased. Dated 27th February 1844.

The petition of the weak and oppressed Badshah Begum, the widow of Meer Afzulodeen Khan Saheb, the late.

(seal) *Badshah Beegum.*

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22 May 1845.

The following is to be written to the high in rank, the Agent for the Honourable the Governor, dated the 22d May 1845.

Meer Jafur Allee having presented an English petition claiming the estate of my late husband Meer Afzulodeen Khan Sahib, I beg to state that his meaning is not completely understood; but your worship having dictated a translation of some paragraphs of it into Guzeratte, I have given them my consideration, and beg to state as follows:

Jafur Allee observes in paragraphs 8 and 9 of his petition, that no division of inheritance has taken place for five generations; and although in the year 1820, after the death of Nawab Mesrooden Khan, his widow Zeaoonessa Beegum took her share of the estate of her husband, according to the Mahomedan law, from her son Meer Afzuloo Meer Khan, yet that a mutual agreement was entered into between the Nawab and his mother, to the effect that in their family the estate of a deceased person had never been, and never should be, divided, and a great deal more is written on the subject. In reply, I have only to observe, that the declaration of one person should not be detrimental to the rights of another. Meer Afzulodeen Khan's father himself was entitled, as residuary, to share in the estate of Meer Tuckwoodeen Khan, and both he and others received their shares; there can, therefore, be no objection to a distribution of his property amongst his lawful heirs.

Meer Jafur Allee assents in paragraph 10 of his petition, that the late Nawab had never to make a rule for his own house, in the same manner as the Honourable Company has power to form rules for their own subjects. But Meer Jaffur Allee derives no advantage from this observation; for by the Treaty of 1800 the Nawab was authorised to administer justice in a fair manner to his relatives and dependents, but had no power given to him to seize their property, or refuse them their rights. The Honourable Company in like manner does not seize people's property, nor deprive them of their rights; if such were the case, it would be an act of injustice.

Meer Jaffur Allee states, in the 11th paragraph of his petition, that the late Nawab wrote to Meer Surfas Allee at the time of the marriage of his daughter, that his estate would not be divided after his death; but that affords no grounds for the non-distribution of the Nawab's estate, since it does not rest with an incumbent, but with his heirs, to make a division of his property; for even if a person in his lifetime were to execute a deed to the effect that such and such acts should be done, and such and such expenses made after his death, it is quite clear it is optional with his heirs to carry his wishes into effect or not: moreover, by the Regulation of Government, if a deed of inheritance be executed by a deceased person in favour of an heir to the prejudice of his lawful heir, the same would be null and void unless attended by the latter; the live heir cannot be deprived of his rights.

4. Meer Jaffur Allee states, in 14th and 15th paragraphs of his petition, that Moslems are of two kinds, first Mohumadee, and, secondly, Imamya; that, according to the law of Mahomaddee, a daughter is entitled to 8 annas (or one-half); but, agreeably to the Imamya law, a daughter gets the annas (or the whole). He states also, that in some countries custom takes the place of law, and when the law is not defined, that custom always prevails; hence the inference that there is no certain rule of action, but that the custom of the place where proceedings are held should be adopted. He further states, that it is laid down in the book Ashbah Wun Nazair, that custom is stronger and preferable to the law, and therefore that the Nawab's custom should be acted upon, setting aside the law; besides which, he writes many other things. It is, however, quite certain, that

that in the courts of this country the cases of Moslems are decided according to the Mahomedan law, and not according to the Imamya. We and the late Nawab are of the Mahomedan religion, and it is the principle of our law that a person of the Imamya religion is not entitled to a share in the estate of a person of the Mohuddee religion by any means whatever. The copy of Jaffur Allee's petition, given to us by the Sirkar, contains no mention of the eight annas' share to be granted to the daughter of the Nawab, as laid down in the Mahomedan law, but he clearly writes that the Bukshee and his cousin are entitled to shares; this being the case, it seems to me it would be very unfair and somewhat surprising if Government should award him any portion of the Nawab's inheritance. 3 May 1856.

(signed) *Synd Ghoolam Hoosain Mokhjar*, on the part of Budshah Begum.

Meer Ahmeddoolah, alias *Chitta*, *Sahib Mokhjar*, on the part of Badshah Beegum.

(True translation.)

(signed) *R. K. Arbuthnot*, late Agent for the Honourable the Governor at Surat.

No. 4.

TRANSLATION of a Petition from Meer Moorrnoodeen Khan, the grandson of the late Buckshee of Surat, dated the 25th February 1844.

I HAD previously submitted petitions to Government, and the agent Sahib, regarding my claim to the inheritance of the late Nawab Meer Afzaloodeen; and, in consequence of the notification issued by Government on the 29th December 1843, to the effect that all persons having claims to the property of the deceased, should represent the same within the period of two months, after which no claim would be admitted, I again beg to state, that, in accordance with the Mahomedan law, I am the heir of my cousin, the deceased Nawab; I am his paternal cousin, and Usheh Usheh means the person who is entitled to the whole of deceased person's property, on the failure of Usbehi Fuaz, or direct heirs. If there be an Ushehi Firz, he would inherit the property, and the Ushehi would receive the residue or remainder. The proof of my inheritance is as follows: Dated 25 Feb. 1844.

I am the paternal cousin of the deceased Nawab, his grandfather, Meer Moeenodeen Khan, alias Synd Ucheen, and my great grandfather, Meer Quanoodeen Khan, both were legitimate brothers. I am the cousin of the late Nawab; for proof of this, refer to Mr. Elliot's report, who questioned the law officers, and obtained their opinions on this point. Moreover, it is well known to the respectable of Surat, that I am his cousin. Your Honour directed me to produce a genealogical table, with the names of mothers; but, according to the Mahomedan law and usage, no names of mothers are written in genealogical tables: it is usual only to mention those of fathers, because, according to law, as well as by usage, the descent is from the father, and not from the mother; consequently the genealogical table, which has been kept in this manner from time immemorial, I submit for your information: the genealogy of all Mahomedans in all parts of the world is thus kept.

TRANSLATION of a Petition from Meer Mooeenoodeen Khan, the Bukshee, to Sir R. K. Arbuthmot, Bart., Agent for the Honourable the Governor, A. C.

AFTER the demise of my cousin, Nawab Meer Afzaloodeen Khan, the late, I presented three petitions, with proofs, on the 25th February 1844, within the period of the proclamation issued by the Sirkar, and your worship has requested me to submit any further arguments and proofs I may have on the subject; I beg, therefore, to represent explicitly that I m the heir of the late Nawab; I am descended from the uncle of the late Nawab's grandfather. For the father of his Excellency, 9 May 1845.

3 May 1856.

the Nawab's grandfather, named Mooeenoodeen Khan, alias Synd Ackhum, and the father of my grandfather, named Meer Mynodeen, alias Synd Millim, were both real brothers; consequently I am the son of the son of the son of the uncle of the grandfather of the Nawab, and the late Nawab was the son of the son of the son of the uncle of my grandfather. I am the late Nawab's walee,* and the late Nawab was my walee. To prove this my consanguinity, I here mention the following proofs:

* Perhaps from the word he means heirs.

The first is my genealogy, which is forwarded with this petition.

2dly. My relationship to the late Nawab is also proved from the sumnel granted to my grandfather, named Meer Mynoodeen Khan Lufdavol Moolk Bahadoor, by the Honourable Company, on the 28th of Maherum 1215, in which it is stated, "that Meer Mijinodeen Khan Bahadoor the aforesaid, who is a near relative "and collateral descendant of the Nawabs of Surat.

"3dly. My near relationship can also be established by the generality of the "great people of the city who are acquainted with it.

"4thly. The history Murate Ahmudie establishes my near relationship, in which "books it is also laid down that Synd Mittern is the elder brother of Synd Ackhum." Since it is proved from the genealogy the history Murate Ahmudie and the Sumud Nama, that I am the son of the son of the son of the uncle of the late Nawab; such a person, according to the sacred law, is called Assaba* and Walee; certainly, then, I am the Nawab's heir, as residuary; for the legal heirs to a deceased, according to the law, are of three kinds: 1st, shares; 2d, residuaries; and the 3d are both shares and residuaries.

* Residuary heir.

Assaba is also called that person upon whom devolves the residue that may be left from the shares out of the estate of a deceased person, or, in default of shares, to receive the whole of the estate; consequently I hope you will issue orders to cause to be given to me that which ought to be given according to the sacred law to an Assaba a Walee, out of the whole estate of my cousin, named Afzeodeen Khan Kumroo Dowlab Husmut Jung Bahadoor.

Written on the 9th May 1845, A. D., Friday.

Petition of Meer Mooeenoodeen Khan Lufeen Jung Bahadoor.

(His seal.)

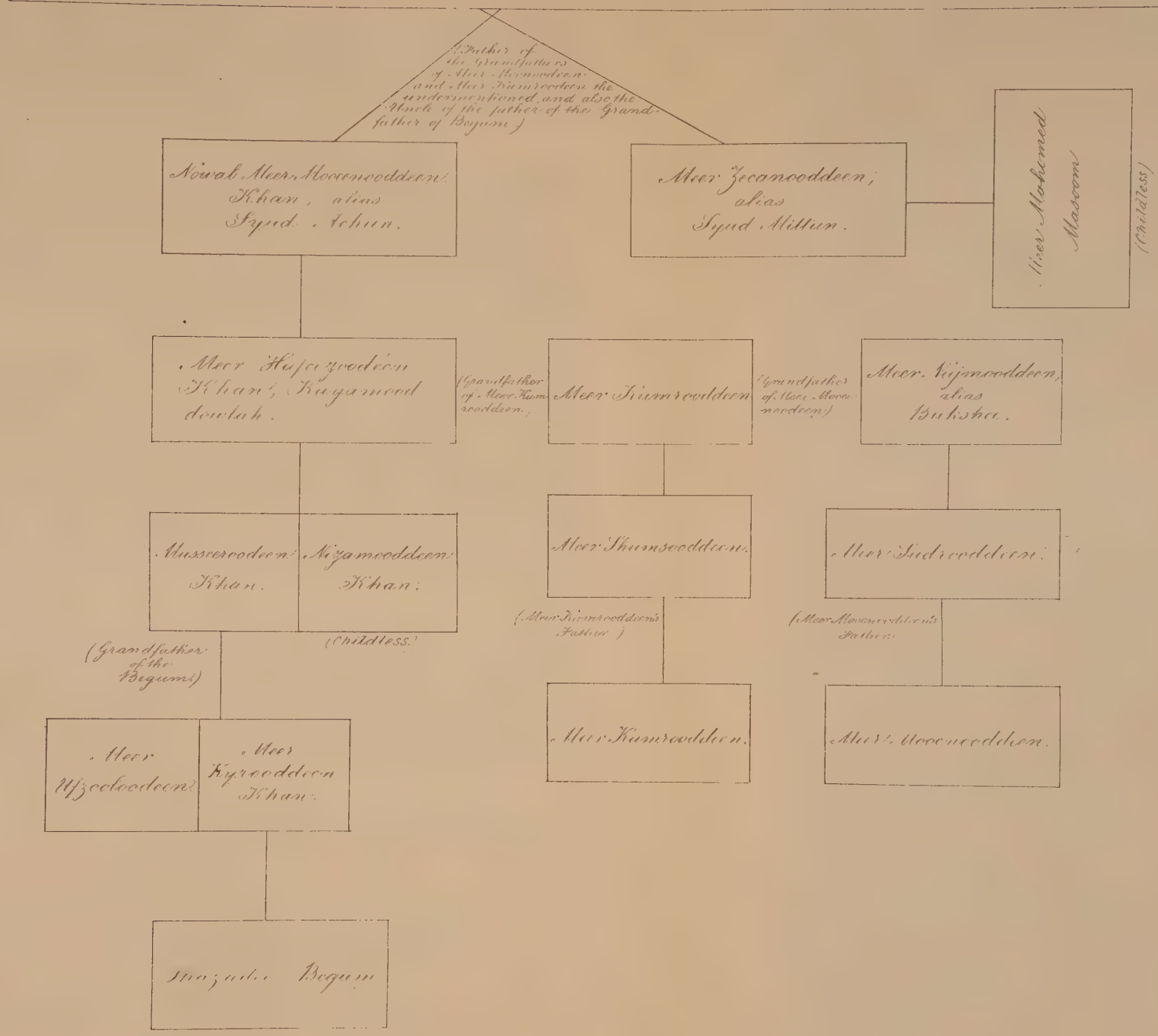
To the high in rank, Agent for the Honourable the Governor, the inhabitant of Surat Buckshee, Meer Mooreenoodeen Khan, the son of Meer Sudrodeen Khan, Sufebinung Bahadoors, representation is, that the under-mentioned is the expressed refutation to the Petition of Eber Jaffur Allee, presented upon the subject of inheritance to the Estate of the late Nawab.

To avoid the obligation of giving me a share in the estate of the late Nawab, Meer Jaffur Allee states, that no division of inheritance has ever been made for five generations. To this I reply, it was optional with the heirs of these five generations to take or not to take the shares to which they were entitled in right of their inheritance, and their acts do not concern me. I am free to take my own share; this assertion is, however, not correct. For I and the late Nawab are of one family, and though I do not know the reason why some of the members did not receive their shares, or why they gave them up, it is quite certain a division took place in my family, and the legal shares of claimants were given to them. To establish the truth of this, I have only to submit the accompanying papers, on seeing which, it will be obvious to your Lordship. Moreover, it is quite evident, from the deed of agreement given in by Meer Jaffur Allee, with his petition in support of his claim, that a division took place between the late Nawab and his own mother, Teedooneeaa Begum, alias Larlee Begum. How, then, Meer Jaffur Allee can say that no division ever took place is a matter of wonder to me: your Lordship will, therefore, make over to me my share according to law.

2d. Meer Jaffur Allee states in his petition, that the seals of my father, Meer Lucloodeen Khan Lufebingurg Bahadoor, and of Meer Kumroodeen's father, Meer Luckrodeen, have been affixed to the above-mentioned agreement between

Meer

SYED ZYNOOODDEEN, *Alias* SHAH MUKHUN SAHIB (THE LATE.)


(Father of the Grandfathers of Meer Hoosnoodeen and Meer Kumroodeen the undermentioned, and also the Uncle of the father of the Grandfather of Begum.)
Nowab Meer Mooeenoodeen Khan, alias Syud Tehun.
Meer Zeeanoodeen, alias Syud Mittun.
Meer Mohamed Madoom (Childless)
Meer Hafeezoodeen Khan, Kuyamood dowlah.
(Grandfather of Meer Kumrooddeen.)
Meer Kumroodeen
(Grandfather of Meer Mooeenoodeen.)
Meer Nijmooddeen, alias Bukshee.
Musseroodeen Khan.
Nizamooddeen Khan.
(Childless.)
(Grandfather of the Begum.)
Meer Shumsooddeen.
Meer Sudrooddeen.
(Meer Kumsroddeen's Father.)
(Meer Mooeenoddeen's Father.)
Meer Ujeeloodeen.
Meer Fyrooddeen Khan.
Meer Kumrooddeen.
Meer Mooeenoodeen.
Mazuda Begum

(Signed)

Dhoorjeram Ruttunram, Wakeel
on the part of
Mooeenoodeen Khan Sahib
Bukshee.

Nº 265.-(Part II.) Ordered by The House of Commons, to be Printed, 9th June, 1856.

Meer Afzaloodeen Khan and his mother, Teaconeesa Begum. But this does not in the least affect our claim, since our father, while they lived, had full power to dispose as they pleased of their own rights, and after their decease their heirs may do as they please. No one who is not a party to a writing should suffer by the writing of a third person; besides, no agreement has been passed in writing, and sealed by our father to the effect that they, or their heirs after them, should not be entitled to share in the estate of Meer Afzaloodeen Khan after his decease. The Nawab and our late father may have agreed by the writing above mentioned, that the inheritance which was then appertained should not be claimed by them, but this can in no way prejudice our present rights. 3 May 1856.

3d. Again, Meer Jaffur Allee states, that as in the paper above mentioned the division of the Nawab's property is prohibited, it is therefore clear it was his intention that no division should take place. In reply, I can only state, that after his decease his heirs are entitled to share in his estate; I therefore claim my rights.

4. We further add, the Nawab did not share in the estate of Meer Minjinoodeen Khan, nor in that of his wife, Khanam Sahib, nor of Meer Tagoodeen Khan, the brother of Meer Ludoodeen Khan; and therefore, if the Buckshee Sahib and Meer Kamrodeen Khan were now to obtain a share in the estate of Meer Afzaloodeen, it would be an act of injustice. To this I reply, that the assertion which is herein made, in nowise benefits Meer Jaffer Allee; on the contrary, it supports my claim; for it is quite evident from this passage that it was optional with the late Nawab to give up his right; as if he had wished to obtain his right, he would have got it without doubt.

It would therefore be contrary to justice that, on account of his Excellency the Nawab not having taken his right, or having given it up, other rightful persons should be deprived of theirs.

5. With the view of preventing us obtaining our rights, Meer Jaffa Allee states, that in Malabar, where the Moslem religion prevails, the Mahomedan law is not practised; he also writes a great deal upon this subject, and argues from the Ashbar Wan Nasan that custom is stronger than the law, by which I suppose he means that custom in Surat is opposed to the law; but I beg to say the custom in Surat has been always the same as the law, and thousands of decisions have been passed according to the law.

6. His Excellency the Nawab was a Mahomedan in his religion, and we are the same. Meer Jaffur Allee may desire, by using these arguments, to alter the custom of this country, and to introduce customs as well as the religion of some other country; but my right, according to the Mahomedan law, is good, and to this even Meer Jaffur Allee assents without question. The Imamya Mut is not acted upon in this country, and it will be impossible for Meer Jaffur Allee to carry it into effect.

14 June 1845. (signed) *Meer Mooeenooden Khan*,
the son of Meer Lufden Sung.

(True translation.)

(signed) *R. K. Arbuthnot*,
late Agent for the Honourable the
Governor at Surat.

No. 5.

TRANSLATION of a Petition from Meer Kumroodeen Khan, presented to the Agent for the Honourable the Governor at Surat, on the 21st February 1844.

I RECEIVED an answer from Government to my petition of the 20th Ziller 1259, decreed directing me, if I had a claim to inherit the property of the deceased Nawab, Mee Afraloodeen Khan, or of any other, to advance the same within the period fixed for that purpose. I now, therefore, beg to state, that my right is clear in two ways; first, through Meer Zeaoonoodeen alias Sha Makum; and, secondly,

3 May 1856. secondly, Nawab Safeler Khan Sahib. In every way, therefore, I am, according to the Mahomedan law, entitled to inherit the property, jewels, and ready cash, &c. of the late Nawab.

A genealogical table is submitted with this petition, from the perusal of which, this will be apparent to you. I therefore * * * you will have the kindness to investigate the matter, and cause my right to be given to me.

Translation of a Petition from Meer Kamroodeen Khan to Sir R. K. Arbuthnot, Bart., Agent for the Honourable the Governor, A. C.

I beg to represent, that on the 1st of September 1260 Ahl, I presented a petition to the Sirkar, with proofs and documents in support of my claim to a share in the inheritance of the late Nawab.

Now your Honour having desired me to state my relationship to the Nawab in detail, I beg to say I claim, as one of the heirs of the Nawab, Meer Afraloodeen Khan Kumrood Dowlah Kusinat Jung Bahadoor, the late, on the following grounds:

My great grandfather, named Meer Zeeaoodeen alias Synd Nattan, and the great grandfather of the late Nawab Meer Mooeemoodeen alias Synd Achlum, were both sons of Synd Treeadeen alias Synd Nuttan. The aforesaid Meer Traoodeen left three sons, the first Meer Treymoodeen Khan Iburt Sing alias Bachshee the grandfather of the present Meer Mooeenoodeen; the second, Meer Mahomed Inasoorudeen died childless; and the third was Meer Kumroodeen, my grandfather; Meer Mooernoodeen alias Synd Achhum had one son, Meer Llaficoodeen Khan alias (Nawab) Kumrood Dowlah: Meer Llafiroodeen had two sons, Meer Nujanoodeen Khan, who died childless, and Meer Nusseroodeen Khan, the late Nawab's father. Meer Nusserooden had two sons, the one Meer Khyrodeen, the second Meer Afraloodeen Khan; consequently my relationship to the late Nawab is clearly this: I am the son of the son of the son of the uncle of the late Nawab's grandfather; such a person is called Assaba Anlessaba, according to the sacred law is an heir, as is well and plainly known to the law expounded. In order to establish my relationship, I submitted a genealogical table with my former petition; at present I enclose another one more explicit. Further, the degree of my relationship with the late Nawab can be learned from many of the old inhabitants of the city, who are acquainted with it. One of them is Hukeem Annur Sahib, the other Mahomed Hyat Chobdar of the Buckshee Sahib; they are now living; consequently I am hopeful you will order the share to which I am entitled according to the sacred law to be made over to me.

Written on the 4th of Juneadool Aval 1261 Ahl, corresponding with the 12th May 1845, A. D.

(signed) *Meer Kurodeen Sahib*, the son of Meer Shumsodeen Khan Tahel, and written by Meer Qeenoodeen. [His seal.]

No. 6.

Translation of a Petition from Shazadee Begum, dated 27th, and received by the Agent for the Honourable the Governor on the 28th February 1844.

27 February 1844. Since the death of my uncle, I have presented six petitions to Government regarding my claims to the inheritance of the late Nawab, copies of which are with your Honour. Now a notification has been issued, that all persons having claims on the property of the deceased should represent the same, with proofs, within two months after, which they will not be admitted. I consequently again represent my claim as the sole descendant of the late Nawab, Meer Nusserrodeen Khan, in this wise: Meer Nusroodeen Khan had two sons, one, Meer Khyrodeen Khan deceased, and another, Meer Afzoloodeen Khan, the deceased. I am the daughter of Meer Khyrodeen Khan, of which the respectable and other inhabitants of this city are all aware; from them inquiry can be made, and when it is established that I am the daughter of the son of the Nawab, Meer Nusseroodeen Khan, then my claim on the Honourable Government will be established to the money which was granted him under the 4th article of the Treaty of 1800, concluded between the Honourable

GENEALOGICAL TABLE.

To face page 24

Nowab Sufder Khan

Mahomed Weear Khan.

Rostum Arakhanum, wife of Meer Nujmoodeen Khan, Sahet Butishee.

Horssun Santra Begum, wife of Meer Shumsodeen Khan and Mother of Meer Khamroodeen Khan, the Claimant

Shamoonar, alias Chetta Sahet.

Noor Jaha Begum, wife of the Nowab Meer Nusseerdeen Khan, and the Mother of the Nowab Meer Ufzlookhan, (deceased)

Meer Zeenoodeen, alias Shea Mukteen Sahet

Nowab Meer Mocenoodeen, alias Ishan

Nowab Meer Hufeezuddeen Khan.

Nowab Meer Nusseerudeen Khan

Meer Wheroddeen Khun

Shah Zadee Begum.

Nowab Meer Nizamoodeen Khan

Nowab Meer Ufzoolduddeen Khan.

Meer Ziamoodeen alias Meeza Muthen

Meerhummoodeen Khan.

Meer Shumsoodeen Khan

Meer Shumroodeen Khan (the Claimant)

Meer Fuzuoodeen Khan Butishee

Meer Mansoor. (no issue)

Meer Sudroodeen Khan

Meer Uoteroodeen Khan Butishee

Day & Son, Lithrs to the Queen.

No 265. (Part II.) Ordered, by the House of Commons, to be Printed, 9th June, 1856

Henry Hansard Printer

Honourable Company and my grandfather, Meer Nussordeen Khan, to the effect, that one lac of rupees, being one-fourth of the revenues of the city and its dependencies, should be paid annually by the Government of the Honourable Company to the said Meer Nussseroodeen Khan and his heirs. Now it is evident the word "heirs" mentioned in this article is correctly applicable to all who may be left after my grandfather, whether his descendants (oland), or his cousins (usbeh), or his distant relations (ukarba). It cannot be said the annuity has lapsed, whilst I, a descendant of the late Nawab, remain alive; besides, there are other heirs and relations of his family still in existence. Neither was any limitation in the Treaty made as regards heirs. How, then, can it be said to have lapsed? I may therefore request you will carefully look into the 4th and 5th articles of the Treaty, and grant what I am entitled to; but of the money mentioned for the support of myself, and those who are dependent on me, in accordance with the instructions of my grandfather, the deceased Nawab, and my grandmother, Zeeaooneesa Sarlee Beegum, to whose protection I was entrusted. By doing this, the Treaty will be fulfilled, and the fame of Government exalted.

My grandfather treated me better than his son. It was therefore incumbent on the Government of the Honourable Company to afford me a sufficient maintenance from the lac of rupees above mentioned, as that was not a pension; for my grandfather, the deceased Nawab, previous to the Treaty, had the full occupation and possession of the revenues of the city of Surat, and was sole proprietor thereof, without any sharer. Hence it was in his power to bestow them upon whom he pleased; he accordingly accepted the annuity in exchange for the city of Surat, and not as pension. It was derived in demand from his own personal property. I beg further to state, that I have certain dependents to support, on which account I am involved in debt. To accomplish my object, I presented a petition to the Honourable the Governor in Council on the 21st November 1843. In reply thereto, I was directed to represent my case to the agent, Sahib Bahadoor, to whom orders had been sent for the settlement of the property and other matters consequent on the death of the Nawab. I am now in hopes the arrangement which has been made for me by the Honourable the Governor will be declared. I am an unmarried woman: my grandmother laid upon my uncle the duty of seeing to my marriage, and my uncle agreed thereto, and all the articles of my jehee, marriage portion, were twice prepared, as is well known to the household people of my uncle, as by the Mahomedan law a man is bound by his confession, if such confession be made by a free person.

I hope a sum of money for my marriage expenses, according to the rank of my ancestors, will, in the first place, be set aside from the property of my uncle, and the remainder afterwards divided. Dated 27th February 1844. Petition of Shahradee Beegum (seal of), the niece of the deceased Nawab, Meer Afraloodeen Khan.

(True translation.)

(signed) *R. K. Arbuthnot,*
late Agent for the Honourable the Governor
at Surat.

No. 7.

Extract of a Petition from Jegre Beegum, Widow of Mee Khyroodeen Khan, the brother of the late Nawab, presented to the Agent for the Governor of Surat, dated 14 June 1845.

Respecting my right to a share in the property of the late Nawab, I beg to inform you this has not been granted to me according to the Mahomedan law of inheritance. I trust, however, to obtain it when the Munasirkha, or division of the shares, is made known. I cannot, being a woman, state the nature of this division, nor what I am entitled to; when the division is made, it will then be determined.

(True extract.)

(signed) *R. K. Arbuthnot.*

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3 May 1856.

No. 8.

Decision by the Agent for the Honourable the Governor on the Claims of Inheritance.

The persons who now claim a right to share in the inheritance of the late Nawab are, first, his daughter, Barekyaroolneesa Begum; second, his widow, Ameeroolneesa Begum; third, another widow, Badsha Begum; fourth, Meer Moornoodeen Khan Buckshee; fifth, Meer Kumroodeen Khan, both distant relations; sixth, his niece, Shahradee Beegum; and, seventh, a sister-in-law, Jegree Beegum.

Vide Letter from the agent at Surat to the Governor of Bombay, dated 28 August 1842, and from the Bengal Government to the Governor of Bombay, dated 9 Sept. 1843.

From an exposition of the Mahomedan law, as contained in the answers of the law officers of Surat and Calcutta, it is quite clear that, with the exception of the two last-mentioned persons, the others are all entitled to shares in the estate of the deceased.

The two last are excluded in consequence of Meer Kyrodeen, the father of Shahradee Beegum, and the husband of Jegree Beegum, having died before his father, Meer Musserdeen Khan, which by the Mahomedan law debarred his children and family from succeeding to any share of his paternal inheritance.

The others, by the Mahomedan law, are entitled to share in the Nawab's estate in the following proportions: eight-sixteenths, or one-half; each of the widows one-sixteenth, and each of the distant relatives three-sixteenths.

But Bucktyaroolneesa Begum has claimed to succeed to the whole of her father's estate as his sole heiress: her right to do so is accordingly to be examined.

This lady died soon after her application; but the grounds of her claim, and the arguments in support of it, have been put forward at length by her husband, Meer Jaffar Allie; they may be stated as follows:

1. It is a principle of law that the inheritance of a deceased person should be determined entirely and exclusively by the rules or laws by which he is himself regulated at the time of his death. The Nawabs of Surat were exempted from the jurisdiction of the British courts of law under the Treaty of 1800. Hence they were not bound by the regulations of Government, but competent to declare or enact laws for themselves.

2. The succession to property is not governed by any moral law or principle of natural justice, beyond a general regard for the kindred of the deceased. It was not, therefore, obligatory on them to adhere to the Mahomedan law of inheritance; and, as the family property had for several generations devolved entirely and undivided from one generation to another, it followed this is the rule which should now be acted upon.

3. It is admitted that in 1820, on the demise of Nawab Meer Nusserooden Khan, his widow, Zeeaooneesa Beegum, claimed from her son, Meer Afzuloodeen Khan, a share in the estate of her deceased husband according to the principles of Mahomedan law, and that the same was conceded to her. It is calculated, however, that a writing was passed upon that occasion between her and her son, countersealed by Meer Sudrideen Khan, the father of the present Buckshee, and Meer Shunsoodeen Khan, the father of the claimant, Meer Kumroodeen, the only relatives of the Nawab who, it is alleged, were then alive, declaratory of the grounds and conditions upon which her claim was agreed to, and therefore the apparant deviation in her case from the rule of the family should not be regarded as abrogating the established custom.

4. The above agreement is confidently relied upon as an acknowledgment by all parties that the custom, as therein stated, existed; and as it contains a declaration of the law or rule by which the family of the Nawab was governed at the time of his death, it is binding both on himself and them.

5. The existence of such custom is not merely proved by the declaration contained in the agreement above mentioned; but by several instances in which it had been observed in the family, particularly in the case of succession to the estates of the late Buckshee Meer Mufmoodeen Khan and his wife, Khanem Sahib, which were not distributed according to the Mahomedan law of inheritance, but were taken possession of exclusively by their son, Meer Sudroodeen Khan,

Khan, the father of the present Buckshee, to the exclusion of the late Nawab, who would have been entitled through his mother to a share in them; and further, that on the demise of Meer Tajoodeen, the brother of Meer Sudroondeen, the whole of his property passed into the hands of his brother, although the late Nawab was also entitled to a share in it by the same law. 3 May 1856.

6. It is a principle of Mahomedan law that custom, even in a family, is stronger than law. The present claim should, therefore, be decided by the custom of the family, and not by the law.

7. The Nawab, being the absolute master of his own property, in no way restrained by legislative enactmets, had full power to dispose of it as he pleased; Government is therefore bound, in administering to his estate, to pay attention to his will or expressed intention denoting the disposition of his property; such expression of his intention being not only a testament to have effect after his decease, but a positive law for the guidance of his family, as binding on them as the Regulations of Government are on the inhabitants of Surat, and this even although the power of the Nawab to enforce his will has of necessity died with him.

8. The Mahomedan law of inheritance has never been so respected as to be binding on Mahomedans, without having been adopted as the law of the State in which they lived. It ought not, therefore, in the present case, to be considered as applicable, unless proofs be adduced that the Nawab had recognised it as the law of inheritance in his family, which he not only did not do, but that he actually repudiated it.

These are the chief arguments adduced by Meer Jaffar Allee in support of his wife's claim. They appear to me to involve three points for consideration: First, whether the Nawab, being exempted from the jurisdiction of the Company's courts, was also freed from the obligations of the Mahomedan law in the disposition of his property? Secondly, is it satisfactorily established that he even so expressed himself as to lead to the belief that he intended his daughter to succeed to the whole of his property, to the prejudice of his other heirs? and, thirdly, in the event of her claim upon these grounds being negatived, is her right founded on the alleged plea that no distribution had taken place for five generations, valid? With respect to the first of these, there can be no doubt that the claim advanced on the part of the Nawab to a distinct and independent authority, free from the restraint of all law, is not only in itself unreasonable, but in no way borne out by the circumstances of his position;* for although in his own person and property he was undoubtedly exempt from the jurisdiction of the British courts of law, he was to all intents and purposes a British subject, amenable to the general control of Government, under Regulation XXV. of 1827, in the same way as any other privileged person, even to the sequestration of his property, had this been necessary at any time for the payment of his debts; and, being a Mahomedan, it followed, as a matter of course, that all disputes to which he might have been a party would have been necessarily settled by the principles of the Mahomedan law. Secondly, Is it satisfactorily established that he even so expressed himself as to lead to the belief that he intended his daughter to succeed to the whole of his property, to the prejudice of his other heirs? This is by no means proved. This intention is only inferred from the 13th clause of aubgreement, which was executed between himself and his mother, in connexion with a dispute regarding her claim to a share of her husband's estate.

This clause is quoted at length by Meer Jaffar Allee, in the first paper given by him in support of his wife's claim; but, fully to understand it, it is necessary to refer more at length to the circumstances under which the agreement, of which it forms part, was drawn up.

The exact nature of the dispute between the Nawab and his mother is not known. Probably it arose out of a refusal on her part to make over to her son much valuable property belonging to his father, which she had in her possession at the time of his death, till he should agree to give her the share in his estate to which she was entitled by law. This, I think, is evident from the wording of the agreement: it is also manifest from the fact, that the Nawab, as soon as his father's

* For an account of the Nawab's position, I beg to refer to the historical account of the family which was forwarded to Government with my letter dated May 1845.

3 May 1856.

father's property was placed in deposit in terms of the agreement, did all he could to evade its conditions, so much so, that the jewels, &c., which had been the subject of dispute, remained locked up without the promised division being made, till the Beegum's death, when the Nawab took possession of them. The fact is, he was afraid, if they remained in her hands, she would give them away during her lifetime to her own dependents and relatives, and he therefore resorted to the plan of the agreement to get them out of her control; for, as he was her sole heir, and would have succeeded to them, as a matter of course, at the time of her death, there seemed no other reason for his conduct.

The specific object of the 13th clause, from its obscure wording, is not very obvious. It may have been to guard against claims to a general distribution of the Nawab's estate being set up at a future period; it would appear, however, rather to bear reference to some former claims which had been advanced by Meer Sudroodeen Khan, the brother of the Begum, whose name alone of the Nawab's relatives, who were required to witness the deed, is mentioned in it; and certainly the wording of the latter part of the clause, which is somewhat remarkable, supports this view of the case; it is to this effect: "That her brother, the "said Meer Sudroodeen Khan, has not and shall not have any claim on her "beloved son for a share in the estate of a dead or living person." Now the words, "any claim on her beloved son," certainly could not be intended to regulate the succession to his property after his own demise. If such was their intention, I can only say the expression is so ambiguous, to say nothing of the irregularity of the whole proceedings as a testamentary declaration, that I really think no judicial officer could be justified, on the strength of it, in abrogating the legal rights of individuals otherwise clearly established by law. Supposing, however, the clause in question could be regarded in the light of a testamentary declaration, and that the Nawab was of opinion, as the agreement was counter-sealed by his relatives, Meer Sudroodeen Khan and Meer Shumsoodeen Khan, that he was thus fulfilling the obligations of the Mahomedan law in obtaining the consent of his heirs to the distribution of his estate after his death, still the document became of no value, since, to have rendered the will valid by the Mahomedan law, it was essential that the consent of every member of the family who was then alive should have been obtained to it, which was not done; for both the Buckshee and Meer Kumroodeen Khan, two of the present applicants, were living, as well as the Nawab's widows, who are equally entitled by the law of inheritance to share his property with his beloved relations, yet no mention is made of any of them in the paper in question. He may have considered that the consent of the father of the Buckshee and Meer Kumroodeen was sufficient; but I cannot admit that those persons, however entitled they may have been to alienate their own rights, had any power to alienate those of their sons and successors, more especially as the succession did not open to them during their lives.

I now come to the consideration of the claims of Buchtyaroohreesa Begum to succeed to the whole of her father's estate, on the plea that no distribution of the family property had been made for five generations, during which her ancestors had held the office of Nawab.

This point involves two questions, viz., the custom of the family, and how far such custom, supposing it to be proved, ought to operate to the prejudice of the Nawab's legal heirs by the Mahomedan law, to which, as I have said, there can be no doubt, as a general rule, he was amenable in his lifetime. The only proof which is adduced in support of the alleged custom is the 13th clause of the agreement above mentioned, which, it has been stated, is confidently relied on as an acknowledgment by all parties that the custom, as therein stated, existed. But this clause makes no mention of any such custom; it simply declares that no division had taken place for five generations, which was probably true; while, on the other hand, the nature of the agreement itself, of which it forms part, directly leads to an opposite conclusion; for if, as is alleged, it was the custom of the family not to divide, how was it the Nawab's mother thought of urging her right to a share in her husband's inheritance, or, what is still more remarkable under such circumstances, how was it that her claims were conceded?

The Nawab had, of course, the power, being under no restraint of municipal law, to disallow the just rights of his mother, unless she and her relatives agreed to certain conditions which he might choose to dictate. But to declare now, in the face of the fact, that she was allowed her legal share, that it is the custom of the family

family not to divide, simply because no division of the family property had been made for five generations, would not only be palpably absurd, but most unjust to the heirs of the Nawab, who were not a party to the writing in question. 3 May 1856.

The fact is, it is by no means unusual for Mahomedan families never to divide, although the members have the right to insist on a division if they think proper, and, in a family circumstanced like that of the Nawab of Surat, this was not likely to have been the case, even if he had not possessed the power to prevent a division by the despotic authority he had over his own family.

The assertion of Meer Juffar Allee, that it was the custom of the Buckshee's family not to divide, is contradicted by Meer Mooeenoodeen Khan, the present Buckshee, as well as by Meer Kumroodeen Khan, who both distinctly state that such was not the case, and they adduce proof in support of this assertion. They say, they know not under what circumstances the mother of the late Nawab did not obtain a share of her paternal inheritance, but positively affirm her claims would have been allowed if she had thought proper to bring them forward. It is not impossible she resigned her right in favour of her brother, Meer Sudroodeen Khan, in which case the claims of her son, the late Nawab, at her death, would have been wholly uncognisable. That a division of the family property, on the death of Meer Sudroodeen, was claimed by his sister, the daughter of Meer Nujuroodeen, and admitted, is unquestionable, as a deed of acquittance, executed by her, countersigned by Mr. Romer, the Chief of Surat, has been produced in the course of these inquiries, by which she agrees to receive a monthly allowance of 50 rupees in lieu of her inheritance; and Meer Kumroodeen, one of the present applicants, not only obtained his share (by compromise of the Buckshee family property, but is now in the enjoyment of a portion of the pension which is paid to the family by Government in right of his relationship). It would appear, also, that the property of Sufder Khan, who married a daughter of Beglin Khan, a former Nawab of Surat, and succeeded his father-in-law upon the musnud for a short time, through his wife's influence, was divided after his death, as appears by a deed of distribution now extant, between his widow and four daughters, who were his only heirs, a precedent which tells rather strongly against the rule of non-distribution, which is now set up by the members of a family which claims its origin from the same Beglin Khan.

Under all these circumstances, I am clearly of opinion that it has not been satisfactorily established that the Nawab's family were governed by any particular custom, as regards the succession of inheritance of its deceased members. The claim of Bucktyaroolneesa Begum, founded on such alleged custom, is therefore disallowed; and the claims of the heirs of the Nawab, who have been declared by the Mahomedan law officers to be entitled to share in his estate, are confirmed, in the proportions specified in the 4th para. of this decision.

(signed) *R. K. Arbuthnot*,
Late Agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

B. No. 1.

Translation of a Letter from Ameeroonessa Begum Sahib, the Widow of His Excellency the late Nawab of Surat, to the Address of Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, dated 21 February 1844. 21 February 1844.

(A. C.)

With reference to your proclamation, No. 1,025, dated 29 December 1843, notifying that all persons claiming as heirs, or otherwise, to participate in the estate of his Excellency the late Nawab of Surat, should, within two months from that date, make written application to you, accompanied by such proofs as might be necessary to substantiate their claims, I have the honour to bring to your notice, that amongst the property sequestrated by order of Government shortly after the decease of the Nawab, my husband, and which was supposed to form his private estate, there is a considerable portion belonging to me of this property. A list is appended to the present communication, and I shall be ready at any time

3 May 1856.

you may appoint to furnish you with the whole of the documentary and other evidence on which my title to it is founded, with a view to the speedy release of the same from sequestration.

(True translation.)

(signed) *Meer Jaffur Allee Khan.*

LIST of the PROPERTY belonging to Ameeroonisa Begum, the Widow of His Excellency the late Nawab, in her own Right, which is at present improperly under Government Sequestration.

NAMES.	SITUATION.	HOW OBTAINED.	PROOFS.	REMARKS.
Kadree Bagh - -	Without the city walls near Salabatpoora Gate.	Given by the Nawab	In her sole possession until sequestered by Government.	The gardeners and other people are paid by her.
Afzul Bagh - -	Near Racecourse -	- Ditto - - -	Copy of the deed of donation sent to the Agent on the 1st November 1843.	- Ditto.
Two Gardens in -	Seengumpoor Duboly	- Ditto - - -	- Ditto - ditto.	
Durya Mahal - -	In the city - -	- Ditto - - -	Possession.	
Piece of land in Sulabudpoor	- Ditto - - -	Purchased. Copy of the bond sent to the Agent on the 1st November 1843.	The bond.	
Dhobhee Ghaut - -	Near Afzul Bagh -	Given by the Nawab	Possession.	

Surat Palace, 21 February 1844.

(True translation.)

(signed) *Meer Jafur.*
Alekhan.
Bhadoor.

I, Ameeroolnisa Begum, the widow of the late Nawab Meer Afzaloodeenkhan, beg to submit to the Agent of the Honourable the Governor, &c. the following memorandum of the gifts made to me by the late Nawab in his lifetime.

Dubboolee Baugh and Sungunpoor Bagh.

On the 3d June 1828 the Nawab made a gift of his gardens situated in Dubbolee and Sengunpoor to myself, and of other gardens to his infant daughters, and executed deeds of gift accordingly; the rents of these two gardens were thenceforth paid over to myself until the Nawab's decease.

Afzul Bagh.

On the 6th September 1830 the late Nawab presented to me the Afzul Bagh, situated near the Racecourse, and executed a deed of gift of it, and the rent of it was thereupon paid over to me during the Nawab's lifetime.

Dhobee Gutta.

A piece of ground, called Dhobee Gutta, adjoining the Afzul Bagh, being about to be sold by a decree of the Court in the year 1838, and it being very desirable that it should be held with the Afzul Bagh, the Nawab purchased it for me through Mahomed Alee Begh, but it being considered indelicate to introduce my name into the public assignment by the Court, it was made out in the name of the Nawab, by whom however it was at the same time positively given to myself, and the rent of it was accordingly paid over to me during the Nawab's lifetime.

Dadalahie Callian and Dadalahie Khoorud garden.

On the 23d September 1832 the late Nawab gave to me these gardens, situated at Hydurpoora, in Surat, and executed a deed of gift of them; the rents of them were thenceforth paid over to myself.

A house in Begumpoorah.

In the year 1834 this house was purchased for me, in my name, through Abdullah Begh, as it adjoined the Dadalahie garden, and it was desirable it should be held with it, but being in a ruinous condition it was never occupied, and remained unproductive.

On third of the Oontyadra village.

In the year 1831 the late Nawab purchased this village, in the Pergunnah of Hasode, for myself and daughters, and the deed of purchase was accordingly made out in our names, upon which the rents and profits of it were paid over to me for about three years, and afterwards, in consequence of an increase of expense, they were

3 May 1856.

were appropriated towards the general expenses of the family, but as our separate property. The deed of purchase was kept by myself, and on one or two occasions, when the late Nawab was in want of money, he raised a loan on the security of deponnuity received from Government, and as a further security requested me to the asit the purchase-deed of the village with the lender, at the same time assuring me that the loan would be repaid out of the Government annuity, and that the deed should be returned to me, which was accordingly done on each occasion, except on the last, when, in consequence of the Nawab dying shortly after procuring a loan of 35,000 rupees from Muncharam Jugjeewundass, and before the Government annuity became payable, the deed remained at the Nawab's decease in the hands of Muncharám Jugjeewundass, but it will be seen on reference to the Nawab's written engagements to repay the loan, that it is therein expressed to be payable from the Government annuity, and that the village itself was not made over as a security.

Kadree Begh.

On the marriage of the two daughters of the Nawab he made a verbal gift of the Kadree Bagh, situate in Ajenah, to myself, and of other gardens to his daughters; the house in Kadree Bagh was at the same time delivered up to me, and has ever since been in my occupation, and the profits of the vegetable garden surrounding it, and of the trees, were paid over to myself during the Nawab's lifetime, but in consequence of the Nawab's being in debt at the time of the gift, he directed his dewan to carry the rents of the grains land in account towards the expenses of his house. The Nawab intended to execute a deed of gift of his property, and for that purpose sent for the cazee to draw up a proper description of it, but it was at first delayed in order to include other property in the deed, and was afterwards forgotten.

A garden called CoowawaleeJumin at the back of the palace.

In the year 1827 the late Nawab made a verbal gift of this garden to myself, and the profits of it were thenceforth received by me.

An undivided thir of Kusmut Bagh.

In the year 1827 the late Nawab purchased the Husmut Bagh, situate in the 8th lane, near the cantonment, and at the same time verbally gave it to myself and my daughters, and the rent of it was thereupon received by myself until the marriage of my daughters, after which it was received by us in equal shares until the Nawab's decease.

An undivided thir of a dwelling-house called the Durya Mahal, in the Mogul Surray.

In the year 1829 this dwelling-house was verbally given by the late Nawab to myself and my two daughters, and the rent of it was thereupon received by me until the marriage of my daughters, when they resided there with their husbands, but shortly afterwards, coming to live with the late Nawab, they left some of their effects in two of the rooms which were in their charge during the Nawab's lifetime, and the other part of the house remained untenanted and unproductive.

With regard to the receipt of the rents and profits of the property above-mentioned, some year ssince one Seedee Roomee, a eunuch of the zenanah used to collect them for me, but the late Nawab having become displeased with him dismissed him from the zenanah, and none of the other servants of the zenanah being fit for such an employment, the rents were, in consequence of my being a female, thenceforth collected in the first instance by the servants of the late Nawab, and credited in his books, and from time to time paid over to me and debited in the accounts, with the exception of the rents of the Coovavalla Jumeen, Husmut Bag, and Durya Mahel, which were sent direct into the zenanah without being credited or detailed in the account books.

The old mahal, being part of the palace of the late Nawab, and a cook-room adjoining.

The late Nawab built this house, forming residence, and I have ever since resided in it; the cook-room was built at the same time, and has ever since been used with it.

A stable near the palace.

The stable was built in 1840 expressly for myself.

I therefore claim all the gardens and houses above-mentioned as my property, and respectfully protest against their being disposed of as the property of the late Nawab.

(True copies.)

(signed) *R. K. Arbuthnot*,
late A. G. (Seal.)

Surat, 22 May 1845.

3 May 1856.

DECISION by the Agent for the Honourable the Governor on the preceding Claims.

Dubholee and Seegunpoor Garden:

3 November 1845. The gardens are entered in the list of the Nawab's ancient possessions, which he furnished to the Agent for the Honourable the Governor at Surat, under date 3d August 1838, and which was forwarded to Government with that officer's letter dated 16th. Idan Thry are now claimed by the petitioner on the grounds that they were bestowed on her by the Nawab, who executed a deed of gift in her favour, bearing date 3d June 1828, the authenticity of which is not disputed, but as the property at the time of the Nawab's death apparently belonged to him, and was entered with his other lands in his jaghee accounts, and leases granted in his name, and the rents collected by his establishment and paid into the treasury as if no alienation had taken place, it became necessary to ascertain whether the lands in question had ever been separated from the Nawab's estate and made over to the Begum, as set forth in the deed, and which is required by the Mahomedan law to render a transfer of property by gift valued, and if so, under what circumstances they had again reverted to the Nawab, and how far their re-occupation affected the validity of his deed of gift. The evidence adduced by the Begum in support of her right, independent of the deed itself, is not satisfactory, inasmuch as she is unable to show by direct evidence that the lands were ever *bonâ fide* in her occupation and possession. It appears, however, from an inspection of a few loose sheets of the Nawab's accounts, which are forthcoming, from Sumvut 1883 to 1890, that in the years Sumvut 1883 and Sumvut 1884 the revenue of the Dubholee gardens were included among the Nawab's jagheer lands, and the rents carried to his accounts, but in Sumvut 1885 they were excluded, an entry being made to the following effect: "Wuzeefa Dubholee Bukshish Dur Mehal;" translated, "The wuzefa of Dubholle is given to the mehel, or female apartments," meaning thereby to the Nawab's wife. Again, from that time till Sumvut 1890, no mention is made of them. It may therefore be inferred they were actually made over to the Begum, and remained under her management during this interval. In Sumvut 1891 they again appear in the Nawab's accounts along with his other lands, and continue included with his other possessions till the period of his death, leases having been granted by his agents to the tenants, the revenues collected by them and duly credited to his accounts, though it is nowhere stated under what circumstances this was done; at the same time a fixed amount appears to have been regularly paid to the mehel khas, or Nawab's private apartments, on account of certain gardens, among which are those in Dubholee, and the entries of which, being of importance, are here extracted at length.

A. D. 1825-26.
A. D. 1833-34.
A. D. 1827-28.

In Sumunt 1891, A.D. 1834-35. The Zillrad 1250, Hizree, corresponding with 10th March 1845. Sumunt 1891, Falgoon Sood 11th. Tuesday. Debit side.

		Rs.	*a.*	*p.*
Rs. 602. 12.	Cash paid to the Sirkar on account of the Gardens of the Mehel for the Fusul of 1891 of the Dewalee instalments, by order of Bunde Gane Allee (the Nawab), to Jemadar Mirza Mahomet Ullee Baig and Meya Khoje, in cash separately.			
	Zoolwarree attached to Burree Begum Saheb - - -	172	8	-
	Nugeena Bagh Bhultaee attached to Mylee Begum Sahel -	137	8	-
	Attached to Mehel Khas, of Bundeegone Allee (or wife of the Nawab, viz.)	292	12	-
	Great Dadee Elahee - - - - - - - - -	134	12	-
	Small Dadee Elahee - - - - - - - - -	42	8	-
	Great garden of Dubholee - - - - - -	60	8	-
	Small garden of Dubholee - - - - - -	52	-	-
		292	12	-

			Rs.	a.	p.
	In Sumret 1892, A.D. 1835-36, 2d Shaval 1851, Sumrut 1892, Maha Sood, 3d Wednesday, January:				
Rs. 610. 18.	Ready cash in the Mehel half instalment:				
Rs. 300. 8.	Mehel Khas, viz.: Dadi Ellahee, small		47	8	–
	Dadi Ellahee, great		137	8	–
	Small garden of Dubholee		55	–	–
	Great garden of Dubholee		60	8	–
			300	8	–
	Burree Begum, Saheb of Foolaree		172	8	–
	Mujlee Begum Sahel Nugenah Bagh		137	8	–
			610	8	–
	In Sumunt 1893, A.D. 1836-37 1st., Rumizan 1825, Sumunt 1893, Magseer Sood 3d.				
Rs. 610. 8.	Of the garden of the Mehel sent into the Mehel through Daee Zanub, of Sumrut 1892.				
	Mehel Khas		300	8	–
	Dadi Ellahee, small. Dadi great, Dabholee small, Dubholee great, Burree, Begum of Toolwaree.		172	8	–
	Mylee Begum, Saheb Nugeena Bagh		137	8	–
	1st Rujeel 1253, Sumut 1893, Assoo Sood 3d, Monday, 2d October.				
Rs. 160. 8.	On account of the rent of the gardens of the Mehel instalments of Ukhateey of Sumrut 1892, through Nuza Saheb, per Daee Zanub.				
	Mehel		300	8	–
	Mujlee Begum Sahib		137	8	–
	Burree Begum Sahib		172	8	–
			610	8	–
	In Sumunt 1849, A.D. 1837-38, Shaban 1253, 666 rupees, of the Fusul of 1803.				
	Instalment of Dawabee, agreeably to what Moteeram had written on account of the jageer of the Mehel, ready cash with Mirza Sahel in the Mehel Khas with Daee Zanub.				
	Garden attached to the Begum Saheb		300	8	–
	Burree Begum Saheb		228	–	–
	Mylee Begum Saheb		137	8	–
	In Zilkey 1253.				
Rs. 666. –	Of the Tusul of 1893, instalment of Akhateej of the gardens of all attached to the Mahels.				
	Ready cash paid into the Khas Mehel in the following manner, through Miza Sahel with Zanub Dahee.				
	Mehel Khas		300	8	–
	Of Mujlee Begum Jahib		127	8	–
	Of Burree Begum Jahib		228	–	–
	In Summut 1895, A.D. 1838-39.				
	In the accounts of this year no sum appears to have been paid to the Begum on account of the gardens of Dubholee, but two items of 295 rupees were paid to the Mehels Khas on account of Kadree Bagh, and of the garden of the Huzoor (now called Khoowawallee Zumin).				
	In Summut 1896, A.D. 1839-40. Filkhad 1255.				
Rs. 1,219. –	Of the income of the garden of the Mehel, instalments of the year 1895, up to the Akhateej.				

3 May 1856.

			Rs.	*a.*	*p.*
Rs. 1,219. –	Twelve hundred and nineteen. 14 Zilkad pashWad 1st, Monday. Send towards the Mehel Khas and Burree Begum Sahil per Moonshee Mohem Lall, who carried in the Mehel Khas 623 rupees, viz.:				
	Dadi Ellahee, great		296	–	–
	Dadi Ellahee, small		91	–	–
	Small garden of Dubholee		110	–	–
	Great garden of Dubholee		126	–	–
			623	–	–
Rs. 369. –	Burree Begum Saheb, of Tulwarree		369	–	–
	Mujlee Begum Sahib Nugeenah Bagh		227	–	–
			1,219	–	–
	In Summut 1897, A.D. 1840–41.				
	1st Jamaolawut 1857.				
Rs. 1,828. –	Ready cash in the Mehel on account of the garden, &c., agreeably to the detail below, through Mirza Sahil, per Mohun Lall, and agreeably to the said turrud (sheet) of the 10th Rubeeolsanee 1257. That turrud (sheet) is with the Duftur.				
Rs. 399. –	Balance of the year 1894 of the Akhateej instalment.				
	On account of Begum Sahil, Rs. 311. 8., viz. :				
	Dadi Ellahee, great		148	–	–
	Dadi Ellahee, small		45	8	–
	Dubholee Garden, great		63	–	–
	Dubholee Garden, small		55	–	–
	Nugeena Bagah, attached to Mujlee Begum Sahil		87	8	–
			399	–	–
Rs. 846. –	Of the Fusul of Summut		1,896	–	–
	Attached to Begum Sahil		623	–	–
	Dadi Ellahee, great		296	–	–
	Dadi Ellahee, small		91	–	–
	Great garden of Dubholee		126	–	–
	Small garden of Dubholee		110	–	–
			623	–	–
	Nugeena Bagh attached to Mujlee Begum, per Mukum		223	–	–
Rs. 583. –	Sundry rent, &c., Mangoes of Kadree Bugh of the Fusual 1896 – Rs. 500 – –				
	Of Dhobee Gutta for the Fusul 1896 – 58 – –				
	Of Wara of Dach Ellahee – 50 – –				
	Of the ground of Cakree Bugh, per Sookle – 10 – –				
			583	–	–
			1,828	–	–

Whether the Nawab by this arrangement intended to re-appropriate the gardens, and give the Begum an equivalent in money in lieu thereof, or whether he intended it as a convenient mode of managing them on her account, is not manifest. I am of opinion he intended to resume them, and that the payment of the sums above mentioned was made rather as compensation for the rents, than as the realizations on her account; for had this latter been the case, it would have been proper that the whole of the collections should have been paid to her, which was not done; and in support of this opinion, I may mention that the Nawab in furnishing a statement of his landed property to the agent for the Honourable Governor in 1845, and subsequently on the 3d August 1838, included these gardens among his ancient possessions, without making any mention of their being the property of his wife. He had no right, however, to resume the lands, as it is a principle of Mahomedan law that husband cannot revoke a gift made to his wife; she is, therefore,

fore, entitled to them under the deed of gift which was executed in her favour in 1828. I accordingly decide they should be restored to her. 3 May 1856.

There is no proof forthcoming to support the claim of the petitioner to garden in Seengunpoor, which is therefore rejected.

Afzul Bagh:

This garden is claimed on the grounds of a deed of gift executed by the Nawab, bearing date 6th September 1830, which is produced, and the validity of which is not questioned. That the garden was made over to the petitioner appears from an examination of the Nawab's accounts, in which no mention is made of it subsequent to the date of its alienation. It appears also that a monthly allowance of 50 rupees was granted to her by the Nawab, on account of wages to gardeners, whom she paid herself. The leases, it is true, were drawn out in the name of the Nawab; and he also included the garden in the list of his lands, which he forwarded to the Agent for the Honourable the Governor, on 3d of August 1838; but neither of these circumstances are considered sufficient to invalidate the otherwise strong testimony in favour of the petitioner's claim, which is accordingly allowed; The garden is therefore ordered to be restored to her.

Dhobee Gutta:

The piece of land called Dhobee Gutta was sold under a decree of court, and purchased in the name of the Nawab in the year 1838. It is now claimed by the petitioner, on the grounds that it was granted to her by the Nawab as a gift immediately afterwards. No deed of gift is forthcoming, and she has failed otherwise to prove that it was ever bestowed upon her. On the contrary, from an examination of the Nawab's accounts, it appears that the income derived from this land was regularly, to the time of the Nawab's death, carried to his own private account, from which only one item of 58 rupees received from the Dhobee Gutta, appears to have been paid to the Begum, without any mention of the payment being made in consequence of the land in question being her property. Her claim is therefore negatived.

Dadi Ellahee, Great, and Dadi Ellahee, Small:

These gardens are claimed by the petitioner on the grounds that they were bestowed on her by the Nawab, who executed a deed of gift in her favour, bearing date 23d September 1832. At the time of the Nawab's death, they were found entered in his accounts along with his other landed estates, and managed in all respects exactly like them. It became, therefore, necessary to ascertain whether they had ever been separated from the Nawab's property, and made over to the Begum, as set forth in the deed of gift, and which, by the Mahomedan law, was requisite to establish the validity of the gift. The Begum was accordingly called upon to adduce evidence upon this point, which is not of a satisfactory nature. It appears, however, from an examination of the loose sheets referred to in the case of the Dubholee gardens, that the rents of these gardens were also regularly brought to account as well as the rents of his other lands till Summut 1889, in which year they are omitted, and in the following year (1890), an entry is found as follows: 1832-33. 1833-34.

"Bhgi Dadi Ellahee Kullun Bukshish ust," which may be translated, "The Great Dadi Ellahee has been bestowed in gift." The same is afterwards said of small Dadi Ellahee. In following year (Summut 1891), they are again found entered among the Nawab's lands, and continue so till the time of his death. During this period the realizations amounted to *Rs.* 2,958. 6., the whole of which was regularly carried to his private account. It appears, however, that certain sums were, in the same period, paid annually to the Begum on account of these gardens, amounting in the aggregate to *Rs.* 2,084. 12., but whether as realized for her, or as compensation for the rents, is not known. The former is most probable, as the full amount of the realization was not made over to her. This point is, however, of less importance, as I am disposed to consider, that the gardens having been excluded from the Nawab's Flagueer accounts, though only for one year after the gift was made, is a sufficient proof that they were separated from the Nawab's estate, and given into the occupation and possession of the donee, whereby the gift was rendered valid by the Mahomedan law, and such having been the case, he had afterwards no power legally to resume it, as it is a principle of Mahomedan law that a gift to a wife by her husband cannot be revoked. It is therefore decided that these gardens be restored to her. 1834-35. *Vide* the extracts given in the Dubholee case.

3 May 1856.

A house in Begumpoora:

There is sufficient proof that this house was purchased by the petitioner with her own money. The sequestration is therefore ordered to be removed, and the property restored to her. The property was purchased for 70 rupees.

Village of Ootiadra:

Ootiadra is a Wuzrfa village, situate in the Hansote pergunnah of the Broach collectorate, liable for an annual kundin or quit rent to Government of 1,500 rupees. It had been mortgaged by the proprietor to Poonjrabhaee Ruttenjee Paruk, and was sold to the Nawab, on payment of the sum of *Rs.* 50,733. 4. to the mortgagee, and a further sum of *Rs.* 10,266. 12. to the proprietor, making altogether the sum of 61,000 rupees. The purchase bond is dated 22d October 1831, drawn out in the name of Seedee Romee, an eunuch on the establishment of the Nawab of Surat, who, as therein set forth, declares he purchased the whole of the lands and places of the village in question as an agent on the part of Ameeroolnessa Begum, married to the Nawab, the present petitioner, and his two daughters, Buktyarolnessa Begum and Moojeeboolnessa Begum, with their money, and for them, in three shares, one for each in participation, &c.

It is, however, evident, from an inspection of the Nawab's accounts for the year in which the purchase was made, that this was not the case, the money having been *boná fide* paid from the Nawab's own cash, or rather, he borrowed it from two bankers in Surat, to whom he passed a note for *Rs.* 62,392. 8., for the purchase, as therein stated, of the village of Ootiadra. This amount appears also duly credited in his accounts, and again debited as follows:—" On account of the purchase of the village of Ootiadra, as detailed in a separate memorandum; viz.—

For the purchase of the village - - - - -	*Rs.* 61,000	–	–
Sundries, cash on brokerage, &c. - - -	1,892	8	–
	Rs. 62,892	8	–"

And which memorandum is likewise forthcoming, in which the disbursements are minutely given in detail.

There is also evidence extant that the Nawab acknowledged the purchase of the village by himself, in a memorandum addressed to Lord Clare, a translation of which was forwarded to the Agent for the Governor at Surat, by the Chief Secretary, with his letter, dated 5th June 1845, in which he states that, " I have purchased the village of Ootiadra, in the pergunna of Hansote, which was the jagheer of the late Synd Oomur Mustan, on account of my children," &c.

Further, it is clear from an examination of the Nawab's accounts from Summut 1892 till the time of his death in 1898, that the entire revenue of the village was regularly carried to his, the Nawab's accounts, and that no part of them was made over to the Begum or his daughters, with the exception of the price of a small quantity of cotton which had been brought from the village and sold, and the proceeds of which it is asserted were sent to the ladies' apartments without being entered in his accounts.

In opposition to these facts, it is attempted to be proved on the part of the Begum and the Nawab's daughters, that the Nawab regarded this village as belonging to them, and that it was managed by him on their account; with this view, the deposition of Mirza Mahomed Ali Begh, the Kharbharee of the Nawab has been taken, who asserts that the revenue of the village, used to be divided into three shares on account of the petitioner and the two daughters of the Nawab, and sent into the mehel, without however being able to afford any proof that such was the case, beyond the cotton transaction above adverted to, nor is his testimony otherwise of much value, as he is completely in the interests of the Begum, and ready to depose to anything she desires him.

1837–38. 1838–39.

In the jageer accounts for Summut 1894 and 1895, there are also found two entries, one in each year, which it is asserted clearly demonstrated that the village in question, as well as certain other gardens therein mentioned (those now claimed by the Begum and the Nawab's daughters), were managed separately on their account, but the entries are of a very suspicious character, having been evidently written

written after the accounts were closed; the words "on account of the mehel" (the only words in the entries from which the right of the ladies can be inferred) is not in the body of the account, but written as a separate heading, in a manner that is quite irregular, and therefore, whether true or false, of no value in support of the conclusion intended to be drawn from it; more especially as the original statement from which the entries purport to have been copied is not forthcoming. Besides, it is only on two occasions that any entry of the kind is found, while the revenues of the village and gardens are regularly brought to the Nawab's private account, from the year summut 1892 to 1898, including the year in which the suspicious entries are found, without any mention of the ladies being the proprietors of them; nor does it appear from the accounts, notwithstanding the entries above-mentioned, that a single payment was ever made to the ladies on account of Cotiadra, from the time of its purchase till the Nawab's death, and Mirza Mahomud Ali Begh afterwards admits that this was the case, qualifying his assertion by stating that the Nawab had said the rents should be paid to the Begums after the liquidation of his debts.

That the Nawab hoped by purchasing this village in the name of his wife and daughters to evade the Mahomedan law, which prohibits a person bequeathing property by will to the prejudice of his heirs, and thus secure it for them, is I think probable but as it is quite clear the property was his to all intents and purposes at the time of his death, it necessarily devolves on his heirs at law; I accordingly decide that the village in question properly belongs to his estate, and the claim of the petitioners is dismissed.

Kadree Bagh:

This garden is included, No. 17, among the ancient possessions of the Nawab in the list which he forwarded to the Agent with his note, dated 3 August 1838, under the denomination of Teiz Kadree, *alias* Bagh Anjunee, in which village it is situated. It is claimed by the petitioner on the ground that the Nawab made a verbal gift of it to her on the marriage of his daughters, together with the house erected therein, all of which she avers was delivered over to her at the same time, and has since been in her occupation; the profits of the vegetable garden and of the trees she states were also made over to herself during the Nawab's lifetime, and that the rents of the other lands were only withheld in consequence of his being in debt at the time of the gift; she further adds, the Nawab intended to execute a deed of gift in her favour, and for that purpose ordered the cazee to draw up a correct description of the land, which was at first delayed, and afterwards forgotten.

In the list of the property claimed by her which was forwarded to the agent with her letter of the 21st July 1844, in the column of proof the petitioner states this garden was in her sole possession until sequestration by the Agent for the honourable the Governor; this, however, by her own admission in a memorandum subsequently given in, was not the case, as it is therein distinctly stated the grain lands were never made over to her, but ordered to be retained for the expenses of the household; it is also quite clear from an examination of the Nawab's records, that such was not the case, for not only are the leases forthcoming which were granted to the ryots occupying them, made out in the Nawab's own name, but the fruit-trees it would appear were even separately retained for his benefit and farmed on his account; nor does it appear from an inspection of his accounts that this garden was ever separated from the Nawab's estate even for a single day, and the whole of the rents without any interruption were regularly credited from the date of the alleged gift to his private account. It is even doubtful if the property was bestowed in gift as alleged, the evidence on this point being confined solely to the testimony of Mirza Mahomed Ali Begh, the karbharee of the late Nawab, who as I have already said, is completely in the interests of the Begum, and would depose to anything she might desire him; but supposing his testimony was trustworthy, as it is necessary by the Mahomedan law to render a gift valid that there should be two witnesses at least to the transaction, the lands in this case were not legally transferred, and the petitioner's claim must thereby have been barred, even had she had complete possession.

The evidence in support of her claim, drawn from an examination of the Nawab's accounts is confined to the following payments, which appear to have been made to the Begum.

3 May 1856.

In Summut 1895, A.D. 1832-39:

Rs. 270. Dated the 2d Rubberool sanee; 2d Jestshood 4th, Saturday. The Huzeer sent in the Mehel Khas, through Mazir Sahil, the sum of 270 rupees from the revenue of the mango tree of Kadree Bagh, which are due and have been paid according to the signed Furul (sheet) which is in deposit per Mukundass and Nurbheram, who took them up stories and returned, and the Huzeer sent it through Mozaper into the Mehel.

Rs. 25. From the garden of the Mehel Khas, which Moonshee Mohumlal this day caused to be paid to Moozafur and debited, viz.:

Rs. 10. Of Govind Ookete of Kadree Bagh, 15 rupees of Ruga Irtha of Huzoor gardens. Ready cash, 15 rupees.

Summut 1896, A.D. 1839–40.

Rs. 20. Of the Musla Bechur, tenant of Kadree Bagh, 20 rupees credited in two items on the 3d Zilkad Poush Sood 5th, Thursday, which is debited and paid to Moozapur, viz.:

Rs. 10. Credited on the 8th Shaval.

Rs. 10. Credited on the 24th Shaval.

A further item is inserted in the same account of the same year.

1st. Rubee alsumee 1256, Jest shood 2d, Summut 1896, Tuesday the 2d June 1840; the revenue of Jamboo of the Kadree Bagh, 45 rupees is received, which 45 rupees was sent for by the Huzoor Mohunlal, gave and returned, and which was sent into the Mehel with Rungoo Khidmutgar, dated 24th Rubee alsunee, Jest mud 11th, Thursday.

Insummut 1897, A.D. 1840-41.

In the original accounts of this year the entries amount to 1828 rupees, sent into Mehel on different accounts, particulars of which are as pointed out in he case of the gardens of Dubhole, among which are two items of the revenue of the Kadree Bagh, inserted as follows:

Rs. 500. Of mangoe trees of Kadree Bagh for the Fusul of 1896, 500 rupees.

Rs. 10. Of the land of Kadree Bagh per Sooklo.

It thus appears that during the year Summut 1895, 1896, and 1897, 855 rupees were paid into the Mehel on account of Kadree Bagh, whereas the revenue recovered by the Nawab on the same period was *Rs.* 7936. 15. An attempt has been made to prove that the house and vegetable gardens were actually made over to the petitioner, and remained in her occupation till the time of the sequestration. But as it is not alleged they were separately granted when the rest of the lands were bestowed upon her, she cannot claim them apart from the latter, even if that point were established, which is by no means the case; on the contrary, it is distinctly proved that the house was after the alleged gift repaired at the Nawab's expense, and occasionally occupied by himself; the Begum's claim to this garden is accordingly rejected.

A garden called Koowawallee Zumni:

This garden, about three quarters of a beegah, is situated immediately behind the female apartments of the Nawab's palace, and has a well in it, hence the name. It is claimed by the petitioner as having been bestowed on her by the Nawab by a verbal gift in 1827; she has, however, failed to adduce sufficient evidence in support of her title, and her claim is therefore negatived. From an examination of the Nawab's accounts it would appear she was permitted to enjoy the produce of this garden during the Nawab's life, and to have on one occasion, in Summut 1895, received a sum of 15 rupees from the rents paid by Ruga Jetha, after being first credited in the Nawab's accounts. In 1897 two small items of expenditure on account of this garden appear charged in the Nawab's accounts, showing that it was not separated at that time from his other landed estates.

Husmuth

Husmuth Bagh:

The piece of land, of which one-third share is here claimed by the petitioner, is situated immediately without the limits of the Surat cantonment, and has a bungalow constructed on it, which is usually occupied by one of the officers of the garrison. It was purchased by the Nawab from Muncharam Jugjeewindoss and Doolul Bhaer Hurquindass under a deed of sale, which bears date 10th September 1827, for the sum of *Rs.* 11,713. 12., and is now claimed by the petitioner and the Nawab's daughters, on the grounds that he bestowed it on them by a verbal gift soon after the purchase. The Begum, however, has entirely failed to prove this point; on the contrary, there is direct testimony from the Nawab's records to show that he exercised complete ownership over the bungalo till the close of his life, and never admitted that he had given it away as is now alleged. He appears to have made over the rent as it was received to the Begum and his daughters as a free gift, but without in any way acknowledging them to have a proprietary right in the premises. Moreover, it is a principle of the Mahomedan law that in case of gift made to two or more persons it is essential that the share of each party in the property be defined at the time of making the gift, or on delivery, without which the gift is not valid: this, it is not pretended, was done in the present instance; the gift is therefore considered not to be established, and the petitioner's claim to share in the property is rejected.

An undivided third of a dwelling-house, called Durya Mehel, in Moogul Surat.

The house, one-third of which is here claimed by the petitioner, is situated on the banks of the river within the city of Surat, and is now almost in ruins. It is claimed on the ground of having been bestowed on her and the daughters of the Nawab in gift in 1827; she has failed, however, to support her title by sufficient proof; but even if she could show that it was given to her, at it is quite clear from the evidence which has been adduced that the Nawab never entirely relinquished possession of the premises, but used frequently to go and live in them for months at a time, even after the marriage of his daughters: the gift under such circumstances would not have been valid. It is also a principle in Mahomedan law that if a gift be made to two or more persons, the interests of each of the donees must be defined either at the time of making the gift, or on delivery, and which not having been attended to in the present case would have equally rendered the gift null. The only evidence adduced in support of the claim is the payment, by order of the Nawab, to the ladies of his family of a sum of money received from a European officer, to whom the house in question had at one time been rented. With this exception there is nothing to show that they have any title to it whatever; the claim of the petitioner is accordingly rejected.

The old mehel being part of the palace of the Nawab and cook-room adjoining.

The old mehel which is here claimed is a part of the old palace in which the Nawab formerly lived, appropriated during his lifetime to the use of the female part of his family. It is claimed on the ground that it was built expressly for the petitioner, with a cook-room, at the time, and that she has since resided therein; she adduces no proof, however, that such was the case, or that it was even made over to her; she occupied it in conjunction with her husband, who always took his meals there, and the property must therefore be considered as belonging to his estate.

Her claim is accordingly disallowed.

A stable near the palace.

Ameeroolnessa Begum claims this stable on the ground that it was built in 1840 expressly for herself; but as no mention is made of this in the Nawab's records, nor any proof adduced in support of her claim, beyond the fact that her Gharree is kept there, her proprietary right to it can hardly be admitted, more especially as it appears from an inspection of the Nawab's accounts that the timber used in the building was purchased by him; her claim is therefore disallowed.

Baroda, 3 November 1845. (signed) *R. K. Arbuthnot*, Late Agent for the Hon. the Governor at Surat.

3 May 1856.

(B.) No. 2.

TRANSLATION of a Letter from Buktyaroonessa Begum Sahib, the daughter of his Excellency the late Nawab of Surat, and Meer Jafur Allee Khan Bahadoor, the son-in-law of his Excellency the late Nawab of Surat, to the address of Sir *Robert Keith Arbuthnot* Bart., Agent for the Honourable the Governor, dated 21 February 1844.

A. C.

WITH reference to your proclamation, No. 1025, dated 29 December 1843, notifying that all persons claiming as heirs or otherwise to participate in the estate of his Excellency, the late Nawab of Surat, should within two months from that date make written application to you, accompanied by such proofs as might be necessary to substantiate their claims, we have the honour to bring to your notice, that amongst the property sequestrated by order of Government shortly after the decease of the Nawab, and which was supposed to form his private estate, there is a considerable portion belonging to us both in Buktyaroonessa Begum's own right, and in our capacity of heirs to our late son Ameeroodeen Khan, and guardians of our eldest surviving daughter Zyaoonessa Begum. Of this property a list is appended to the present communication, and we shall be ready at any time you may appoint to furnish you with the whole of the documentary and other evidence on which our title to it is founded, with a view to the speedy release of he same from sequestration.

(True translation.)

(signed) *Meer Jafur Allee KhanBahdaoor.*

LIST of the PROPERTY belonging to Buktyaroonessa Begum, in her own right, and which is at present improperly under Government Sequestration.

NAMES.	SITUATION.	HOW OBTAINED.	PROOFS.	REMARKS.
Nughuna Bagh - -	Near Phoolpara -	Given by the Nawab	Copy of the deed of donation sent in to the Agent 1st November 1843.	—
Hushmut Bagh - -	Autway Lines -	- Ditto - - -	Possession - -	The produce of this bungalow used to have been given to the Buktyarooneesa Begum and Burree Begum, the late.
Baghi Dulfiza - -	Near Mujoora Gate -	- Ditto - - -	Copy of the deed of donation has been sent to Agent on the 1st November 1843.	One-half of this belongs to Buktyaroonessa Begum, and the other half also by her on the part of her minor daughter.
Baghi Junn, the residing mansion, with the outer-houses, except the New Palace.	Near Sura Gate -	- Ditto - - -	Possession.	—
State Jewels, &c. -	In the Palace, under seal of the Agent and Baktyaroonessa Begum.	Given by the Nawab publicly, on the 4th February 1841, to AmuroodeeinKhan, the late.	Separated by the Nawab from other things, and given in possession of the parents after the death of the donee.	This is claimed by the Buktyaroonessa Begum for her husband, the minor daughter and herself jointly being the heirs.
Village of Aontadra -	In the Hansob Purgunnah.	Purchased in their own names.	Copy of the bond sent to the Agent on the 1st November 1843.	This jointly belongs to Buktyaroonessa Begum, Ameeroonesse Begum, and Nuzeeboonessa Begum, the late.

3 May 1856.

The Agent of the Honourable the Governor, &c. having requested me to state what portion of the movable effects taken possession of by the Agent, and after the decease of the late Nawab Meer Afzoolooddeen Khan, I claim as my own, and in what right, I beg to submit the following memorandum of the same.

On the 24th November 1838, Amurooddeen Khan was born of my wife, the daughter of the late Nawab, who always exhibited the greatest regard for the infant, and on several occasions gave to us ornaments and other things for the infant's use; and on the 4th of February 1841, the Nawab, with great ceremony, presented the infant to his household as his future heir, and gave to the infant jewels, clothes, and effects, which were then separated from the other property of the Nawab, and placed in a room of my zenanah, where they remained during the infant's lifetime; some of them were worn by him, and others used occasionally; all these ornaments and effects are specified in detail in the inventory annexed.

The Nawab also notified the ceremony which took place on the 4th of February 1841 to my father, in a letter which will be produced.

On the birth day of the infant presents were also made to him by his grandmother, and Meerza Mahomed Allee Baigh, which were used by the infant, and are also described in the inventory.

In the year 1839 the Nawab purchased an elephant, called "Hyraguze," of Mahomed Zamine Jemader, of Baroda, for Ameerooddeen Khan, and on its arrival at Surat he gave it to Ameeroodien Khan; after which it was always regarded and known as Ameeroodien's elephant by all the Nawab's establishment, and upon Ameeroodien's death the elephant was used by myself up to the time of the Nawab's decease.

Ameeroodeen Khan died on the 10th of June 1841, and the effects above-mentioned remained with us as our property, and were so accounted until they were sealed up by the Agent on the late Nawab's decease.

No claim was ever made to these effects by the late Nawab in his lifetime, and even according to the Mahomedan law of gift and inheritance they could not be retracted after my son's decease, on which event we became entitled to them, as his only heirs.

I therefore claim the effects and the elephant above-mentioned as the property of myself and children, and respectfully protest against any of them being retained or disposed of by the Agent of the Honourable the Governor, &c.

Surat, 9 May 1845. (signed) *Jafur Allee.*

Inventory of Effects given by the late Nawab to Meer Ameeroodeen Khan, deceased, the son of Buktyaroonessa Begum Sahib.

Presented on the 4th February 1842.

2 wristlets (pochee) set with diamonds and rubies.
1 large diamond finger ring.
1 diamond and emerald finger ring.
1 turban ornament and feather, set with diamonds (culzee).
1 ditto ditto, set with one emerald and diamond (seerpesh).
1 girdle, set with precious stones, &c., complete (pesh cubbage).
2 curopies (tholee), with the furniture complete, and two silver trees for a palanquin.
29 (zabas).
2 palanquin sticks (mehur muratub).
1 large silver stick.
3 silver horse trappings (mordo doomalur and stakle).

Present on other occasions.

1 silver pot for drinking water, with dish and cover (abkoora).
1 silver cup (cuttors) with dish and cover.
1 silver rose-water bottle.
1 ditto box, with cover.

A head ornament and feather (surposled and culgee), set with precious stones, were presented on the day the infant was weaned.

 1 necklace

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1 necklace, of two rows, with diamonds (doogdoogee), and two finger rings, one set with diamonds, and another of emerald and diamonds, presented on the infant's birth-day.

1 pair of wristlets (pochee), set with precious stones of small size.
1 pair of gold feet ornaments, set with precious stones (ghoogu).
7 finger rings (chellay).
4 gold flowers (laneh).
2 gold feet ornaments (zauzur.)
4 silver ditto ditto.

Presented by Ameeroolnessa Begum.

1 necklace, of three rows, set with emeralds (leelum and doogdoogee).

Presented by Mirza Mahomed Allee Baigh.

1 necklace, of two rows, with drops (doogdoogee and loluck).

(signed) *Jafur Allee.*

I, Meer Jafur Allee, beg to submit to the Agent of the Honourable the Governor, &c., the following memorandum of the landed property given by the late Buktyaroonessa Begum and her children by the late Nawab Meer Afzooladeen Khan in his lifetime.

The Nugheena Bage, situate in Bhutalager.

On the 3d 1828, the late Nawab executed a deed of gift of this garden to Buktyaroonessa Begum and the rents of it were paid over to her mother during her infancy, until she married, after which they were paid over to herself.

One-third of the village of Oowtyadra.

The circumstances attending the gift of this property by the Nawab to his wife and Buktyaroonessa Begum and her sister, are set forth in the memorandum delivered to the Agent by the widow of the Nawab.

Of the Hushmut Baugh and to the Durya Manel.

This garden was, on my marriage, given to the late Buktyaroonessa Begum but the Nawab directed that in consequence of his being in debt, the rents should be carried in account towards the expenses of his house.

Mahomedee Bagh, situated in Sullab, at Poorah.
Bagh Delfaza, situated near Majoora Durvaja.

In the year 1832 this garden was purchased by the late Nawab for Buktyaroonessa Begum and her daughter, and on the 11th June 1842 he executed a deed of gift of it accordingly, but the house in it being in a dilapidated state it was unoccupied, and the death of the Nawab happening shortly afterwards, no rent was received from it.

* *S. O.*
The Aynah Mahel and the old Dewaukhana, in the palace.

On* the late Nawab in the presence of his household verbally gave the aynah mahel and dewankhanah to Ameeroodeen Khan, the infant son of the late Buktyaroonessa Begum; the aynah mahel was then and ever since has been exclusively occupied by myself and family, the late Nawab having built a new residence and dewankhana for himself, but the dewankhana being an open place, though used chiefly by my attendants, might be frequented by all the household of the Nawab.

I therefore claim the gardens and houses above-mentioned on behalf of the daughters of the late Buktyaroonessa Begum, and respectfully protest against their being disposed of as the property of the late Nawab.

(signed) *Jafur Allee.*

Surat, 22 May 1845.

I, Meer Jafur Allee, beg to submit to the Agent of the Honourable the Governor, &c., the following memorandum respecting the husmut mahel and a stabe formerly belonging to the late Nawab Meer Afzooladeen Khan.

At the period of my marriage with the daughter of the late Nawab, I was residing in the duriah mahel, but on the second Friday after that event, the late Nawab invited me to come to reside in the husmut mahel, within the enclosure of the palace, to which I consented, and on my first entering the husmut mahel the Nawab presented it to me, saying, "I gave you this place, may it be propitious to you," and I have ever since continued in the exclusive occupation of it.

After

After I had resided there some time I required a stable for my horses, and the late Nawab built a stable outside the palace gate on the west of it for myself and gave it to me, since which it has been in my exclusive possession. 3 May 1856.

I therefore beg to claim the above-mentioned house and stable as my property.

(signed) *Jafur Allee.*

Surat, 3 June 1845.

Meer Jafur Allee begs to submit the following memorandum on behalf of Zavolnissa Larlee Begum and Rahimoolnissa Begum, his infant daughter, respecting the garden called the Misser Baugh, taken possession of by the Agent of the Honourable the Governor, &c., as part of the property of the late Nawab Meer Afzooladeen Khan.

In the year 1827 a foundling, then three days old, was taken into the zenanah of the late Nawab for the purpose of being brought up. She was named Wyheedool Nissa Begum, but was commonly called Messer Begum, and she continued in the zenanah during the Nawab's lifetime.

In the year 1834 the late Nawab, being possessed of a garden called Julk a Wadee, directed it to be thenceforth called Misser Bagh, at the same time stating in the presence of several persons that he had given it to the Misser Begum, after which it was always so called, but Misser Begum being then an infant, no specific appropriation was made of the rents of it.

On the 18th February 1845 Misser Begum executed a deed of gift of the Misser Baug to Zaoolnissa Begum and Rahimool Nissa Begum, and shortly afterwards departed this life.

Meer Jafur Allee therefore begs to claim the above-mentioned garden as the property of his daughters.

Surat, 3 June 1845.

(signed) *Jafur Allee.*

(True copies.)

(signed) *R. B. Arbuthnot,* late Agent Governor.

Decision by the Agent for the Honourable the Governor on the preceding Claims.

Jewels and Elephant claimed on the part of Ameeroodden Khan.

The property which is here claimed it is asserted was given by the Nawab during his lifetime to Ameerooddeen Khan, his grandson, the infant son of his daughter Buktyaroolnessa Begum, by Meer Jafur Allee Khan. This fact, however, had not been made public; the child had died, and as Jafur Allee and his wife had no establishment of their own, but lived with the Nawab, it was thought advisable not to release the property in question until the case was properly investigated, especially as among the articles claimed some of them were designated as state property, and many of the jewels were those which the Nawab had himself always worn on occasions of ceremony; several of the jewels, it was asserted, had been given to the child by some of the Nawab's relatives and dependants. The question to be decided was, had the Nawab and the others in reality given these jewels to the child, and if so, were the gifts complete by the Mahomedan law, which requires that property bestowed in gift should be separated from the effects of the donors and made over to the donees, or in cases of minority, to the child's guardian for him and on his behalf.

As regards the Nawab's jewels and the state insignia which are now claimed, it has been ascertained from the evidence of persons who were present that the Nawab, when his grandson was about two and a half years of age, came to a resolution, as he had no son, to go through the ceremony of appointing him as his musnud musheen or successor, on the gadee or throne, and accordingly carried him in his palkee on the morning of the 4th February 1845, as far as the gate of the city, and after returning to the palace presented him with his personal jewels, such as he usually wore on state occasions, of which two or three

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articles were put by himself on the child, and the remainder being placed on a tray or box before him, the Nawab said that he bestowed them upon him as well as the dewankhana or hall, in which they were assembled, together with the other insignia of state enumerated in the list which accompanies the petition of Meer Jafur Allee. His household were then instructed to present the child with nuzurs or customary offerings on such occasions, after which the jewels were returned to the zanana to Ameeroolnessa Begum, the wife of the Nawab, who previously had charge of them, with instructions to her to make them over to Busktyaroolnessa Begum, the mother of the boy, and in the course of the day as this was not done, the Nawab sent his Karbharee Mirza Mahomed Alee Beg to get them from Ameloolnissa Begum, and to deliver them to the other, which the latter deposes to having done. There is some discrepancy in the evidence of the persons who relate these circumstances, but upon the whole I am inclined to believe that the Nawab did make over his jewels, &c., to his grandson on the occasion referred to, and as he did not resume them after the death of the child, which shortly afterwards happened, it would seem he intended them to be the property of his heirs.

The gift, however, it appears from the answer of the Mahomedan law officer of the Sudder Devanee Adawlut, to whom a reference was made on the subject, was not complete according to the Mahomedan law in consequence of the jewels having been delivered over at the time the gift was made to the child's mother instead of his father, who was his legal guardian. It is therefore invalid, and the heirs of the Nawab, and not the heirs of his grandchild, have the legal claim to them.

The queries, together with the replies of the Mahomedan law officer in Bombay, are annexed to this decision for the information of Government.

The reply of the Quzee of Surat, which was taken on the same point, differs from that of the Bombay law officer. As the question, however, which was put to the former by the applicant was rather of an equivocal nature, and full reliance cannot be placed on the opinion of a person who is an inhabitant of Surat, and having been on terms of intimacy with Meer Jafeer Alee, I have without hesitation adopted the opinion of the latter.

The question which was put to the Quzee of Surat is as follows, "If a child be in the care of the mother, takes possession of a gift (to her child), is the gift valid or not? Answer, "The gift is valid."

I may add, that the opinion of the law officer in Bombay is fully borne out by the principles of the Mahomedan law, which distinctly declares that while a father is alive and present the mother has no legal power of guardianship over her child, and could not therefore legally make seizure of any property given to him; if the father is dead, or at a remote distance, and the child is living with his mother, she may make seizure of a gift to him when signifying her consent to do so.

It is then clear that as the jewels were not made over by the Nawab to Meer Jafur Allee at the time the gift was made to his grandson, it was necessarily null and void, and the property in that case reverts to the estate of the Nawab for the benefit of his heirs.

The jewels which were given to the infant by the relatives and dependants of the Nawab, to which his heirs have no claim, are ordered to be restored to Meer Jafur Alee from whom they were taken.

The only witnesses called to prove the gift of the elephant by the Nawab to his grandson, are Ameervolnessa Begum, his widow, and Futteh Mahomed Jemadar, both persons entirely in the interests of Meer Jafur Allee. Their testimony alone I consider is not sufficient to establish that point, especially as the latter deposes to the fact that on the death of the child, the Nawab ordered the animal to be tied up with his other elephants; neither is seizure on the part of the child's father shown, as required by the Mahomedan law to render the gift valid. Under these circumstances this part of the claim of the petitioner is disallowed.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governors at Surat.

3 May 1856.

TRANSLATION of a Question put to Abdool Kadur Qazee of the Sudder Dewanee Adawlut, dated 20th June 1845, by the Agent for the Honourable the Governor at Surat.

QUESTION. If A. makes a gift of his jewels and other property to his daughter's son, B., of tender age, with the intention that B. should be the heir of A., and places the property and jewels in the possession of his daughter, C., to the mother of B., the father of B., by name D., being alive and living with A., and notwithstanding which the property is put in the possession of C., B. dies in his infancy, and up to the death of A. the property remains in possession of C.; therefore, according to the Mahomedan law, who is entitled to the said property, the heirs of A. or of B. ?—ANSWER. If A. makes a gift of his property and jewels to his daughter's son, B., of tender age, and the said property and jewels are in the possession of C., the mother of B., according to the Mahomedan law, it is directed that if A. made a gift of such property and jewels to B. according to law, the property will fall to the heirs of B., but if no gift was made of the property, then the said property will revert to the heirs of A. Such is written in the book of "Fukha," dated 15th July 1845. (Signed) Quzee Abdool Kadar. Translate of a Question put to the Qasee by the Court of Suddar Dewaine Adawlut, at the request of the late Agent for the Honourable the Governor of Surat.

On the 2d June 1845 a question was put to you, which was replied to on the 15th July 1845, but it does not appear that you gave a clear answer. You are now requested to state clearly with reference to the former answer made to the question put to you, whether, according to law, the jewels, &c., given by A. to B., stands good or not? When a person makes a gift it is necessary that the property given should be separated from the property of the donor, and put into possession of the person to whom the gift is made; if he be a minor, his father, as the guardian, is empowered to receive it. The gift would then be valid according to law. In the question formerly put to you, it was stated that the property which was given to B. was made over to his mother, C., and not to his father. After taking the above into consideration, make your reply according to law.

(signed) *H. P. Tucker.*

REPLY of the Qazee.

IN the question put to me on the 2d June 1845, the word "gift" was not mentioned. In my reply, I stated that if A. made a gift of jewels to B., according to law, then the heirs of B. are entitled to the same; but if the gift was not made according to law, then the heirs of A. would get it. The present gift was not according to law, since it is necessary that the gift should be held in possession; but as the property in question was given into the possession of the mother, C., B.'s father being present, the gift in that case would not be valid according to law, and the jewels and property would revert to the heir of A. This is written in the book of Alum Ghuree.

(True translations.)

(signed) *R. K. Arbuthnot*, late A. G.

NUGEENA BAGH, situated in Bhuttaee.

THIS garden is claimed by Meer Jafur Allee, on the grounds that it was granted to his wife by the Nawab, who executed a deed of gift in her favour, dated 3d June 1828, the authenticity of which is not disputed, and that, as he and her heirs, it now belongs to them. The land was, however, at the time of Nawab's death in his own possession, and the rents paid into his treasury, as if no alienation had taken place. It was, therefore, a question whether they had ever been entirely relinquished by the Nawab, without which the gift, by the Mahomedan law, would have been incomplete, and therefore null and void.

3 May 1856.

When the deed was executed, Buktyaroolnessa Begum was a minor, not more than seven years of age; but it was competent to the Nawab, as the guardian of his child, to take possession of the garden for her, and it is accordingly stated in the deed that he did so, whether *bonâ fide* or only nominally is not clear. It appears, however, from an examination of the loose sheets already referred to in the dubholee, and other cases which were found, for a series of years, from Sumot 1883 to 1890, that in Sumot 1885 (A.D. 1827, 1828), the rents of the Nugeena Bagh were excluded from the Nawab's ghaeer accounts, an entry being made in them for that year to the following effect: Nugeena Bagh (balance due) to the end for ——

A. D. 1825–26 to 1832–33.

Nor does the payment of the sums above referred to invalidate this view of the case, since these were evidently given to her as compensation, and not as collections made on her account, in which case the whole sum collected should have been paid to her, which was not done.

It appears, however, by the Mahomedan law, that no person has a right to resume a gift made to a relative within the prohibited degrees, which, of course, Buktyarsolnessa Begum was, being the Nawab's daughter, if the gift was complete, which in this case it must be held to have been, since not only was the land separated from the Nawab's estate for several years after the deed was executed, but the gift having been made by a father to his minor child, it became perfected by the mere declaration of it. The resumption of the garden by the Nawab was therefore illegal, and it is accordingly decided that it should be restored to the heirs of Buktyarolnessa Begum, she having died since her claim was preferred.

One-third Share of Qotyadra Village of the Husmut Bagh, and of the Durya Mahel.

The circumstances under which one-third share in the above-named property is claimed, having been fully detailed in the claim of a similar nature preferred by Ameeroolnessa Begum, it is here only necessary to state that the claim of the petitioner is disallowed, for the reasons recorded in that case.

Mahommudee Bugh, situate in Sullabutpoora.

Meer Jafur Allee claims this garden, on the grounds that it was, at the time of his marriage, given to his wife, the late Buktyaroolnessa Begum, by the Nawab, who directed, that in consequence of his being in debt, the rents should be carried in account, towards the expenses of his household; petitioner has adduced no proof in support of his assertion; and as, by his own showing, the gift was never completed by seizure of the donee, which is essential by the Mahomedan law, to render gift valid, his wife's title to it cannot be considered good; that the garden continued in the possession of the Nawab after the period when it is asserted it was given to his daughter is also quite clear from an examination of his accounts from 1891 to 1898, during which *Rs.* 2,692. 8. appear to have been received from tenants who executed leases to the Nawab himself, and no item of which is found to have been paid to Bukyaroolnessa Begum. Meer Jafur Allee's claim to this garden, founded on the right of his wife to it, is accordingly disallowed.

1834–35 to 1841–42.

Baugh Dulliza, or Lall Baugh, situated near Muzdooree Gate.

This garden, in which there is a bungalow, is situated within the walls of Surat, near the Mujoree Gate. It was purchased by the Nawab in 1842 (the deed of purchase bears date 6 June 1842), from the representatives of Dr. Panton for the sum of *Rs.* 2,600, as appears by an entry in his cash account of that year. It was immediately afterwards bestowed by him, in gift, upon Buktyaroolnessa Begum, his daughter, and Zeeaoolnessa Jarbee Begum, his granddaughter, a child of two years old, the daughter of Meer Jafur Allee, and the aforesaid Bukyaroolnessa. The deed of gift is produced, and its authenticity is not questioned. It sets forth that the donor had separated the whole and entire garden from his possession, power, and occupation of the two donees, and that Nurza Mohomed Allee Baigh, agent on the part of Buktyaroolnessa Begum, and of Meer Jafur Allee, the father and guardian of Zeeaoolnessa Jaree Begum, declared he received

possession

possession thereof on their account, and so forth. The gift would therefore have been complete, according to the Mahomedan law, especially as there is no proof forthcoming from the Nawab's records to show that he at any subsequent time exercised a right of ownership over it. But by the Mahomedan law, a gift by one person to two others is invalid, if it be undefined, as was the case in the present instance, no division of the property having been made, either at the time of the gift, or when seizure took place. The gift is therefore declared to be invalid, and the claim of Meer Jafur Allee is disallowed. 3 May 1856.

A. D. 1825–26 / 1832–33.

Anah Mehel and Dewan Khanah.

The Anah Mehel and Dewan Khanah were built by the late Nawab, and occupied by him till about two years before his death. They are now claimed by Meer Jafur Allee, on the plea that they were given by the Nawab to his infant son Ameeroodeim Khan, and have descended to him by right of inheritance. But the evidence which has been adduced is quite insufficient to establish the validity of the gift. On the occasion of the Nawab's going through the ceremony of placing his grandson on the musund, as related in the case of the jewels and elephant, it would appear that he included the dewan khana among the property which he then bestowed on his grandson. Accordingly, it is not disputed that the words he is said to have used may have been uttered; but there is no proof whatever of his having entirely relinquished his right of ownership over the house in question, or that he formally delivered it into the possession and occupation of the child's father, which was essential to render the gift complete by the Mahomedan law; on the contrary, it is quite clear that he continued to occupy it as usual, till his new palace was built; and at the time of his death, much of his property still remained in it. The validity of the gift is therefore not established, and the claim of the petitioner to it is disallowed.

As regards the anah mehel, the witnesses called to prove the gift of it to Ameeroodeen are Futteh Mahomed Jemadar, in the service of Meer Jafur Allee, and the Dewan Atmaram Kirparum; the former is entirely in the interests of Meer Jafur Alur. He states that on one occasion, when the Nawab's grandchild was about a year old, he heard the Nawab say to him in presence of others, none of whom, however, have deposed to the fact, that he made him a present of the building in question; at the same time, he ordered a new palace to be erected for himself, the foundation of which, it was asserted, was commenced the same day. The Dewan, on the other hand, states, the house was given to the child on the same occasion as the Dewan Khana. But the testimony of the latter is nowhere upheld, it is therefore of no value, and the proof of the gift necessarily rests on the evidence of Futteh Mahomed Jemadar, and whether her statement be correct or not, it is unnecessary to inquire, for, as the gift was not accepted by Meer Jafur Allee, as the guardian of his child, he not having been present at the time, and the Nawab did not then relinquish possession of it, and never afterwards formally made it over to his grandchild, or to his father, as his guardian, it became, as a matter of course, null and void. From the time of his daughter's marriage with Meer Jafur Allee, she had apartments in the Aynah Mehel, which was then the residence of the Nawab, which were also frequented by her husband, and after the Nawab went into the new palace, she continued to reside in them as formerly. But this cannot be considered as giving either to her son or herself, or her husband, a proprietary right in the premises, unless the same had been formally delivered over to them by the Nawab. The claim of Meer Jafur Allee to both these houses is accordingly disallowed.

1834–35 to 1841–42.

Husmut Mehel and Stable.

The house which is here claimed is a detached building, situate within the gate of the compound of the Nawab's palace; it was built by the Nawab, and was appropriated by him as the residence of distinguished guests. After the marriage of Meer Jafur Allee with the Nawab's daughter, it was occupied by him during the day, and at night, and for meals, he went to his wife's apartments in the palace. It is now claimed as his personal property, on the grounds that it was given to him by the Nawab when he came to reside in his family, soon after his marriage. No deed of gift was executed, but he brings in support of his assertion Mirza Mahomed Allee Baigh, and a person in his establishment called Buseeoo, who depose to having been present on the occasion, and to have heard the Nawab say, he gave him the hushmut mehel. The former further states,

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that the Nawab said to Jafur Allee that he might read and write in it, and do what he pleased, and hoped it might be propitious to him. The latter declares nothing was said but the words above related. Mirza Mahomed Allee Baigh also deposes to the gift having been made on the third or fourth Thursday after the marriage, while the claimant asserts he was invited to come and reside in the Hushmut mehel on the second Friday after his marriage, and that on his first entering it, the Nawab said that he gave it to him; these discrepancies, joined to the very little dependence to be placed on the witnesses, who are entirely in the interests of Meer Jafur Allee (besides that the testimony of a servant by the Mahomed law is illegal), oblige me to decide against the petitioner, on the grounds that I do not consider the gift to be sufficiently established. The house I believe to have been given to Meer Jafur Allee to occupy, and nothing more, and the stable may have been built for his use in the same way. Had it been the Nawab's intention to have transferred the proprietory right in these premises to him *bonâ fide*, there is no doubt he would have executed a deed of gift in his favour, as he appears to have been in the habit of doing, and not allowed the title of his son-in-law to rest on the insufficient evidence that is now produced. As this was not done, Meer Jafur Allee must abide the penalty of a faulty title. His claim is therefore disallowed.

Misree Bagh.

This garden is claimed by Meer Jafur Allee, on behalf of Yeaoolnessa Larlee Begum, and Rakirnoolnessa Begum, his infant daughters, under the following circumstances: That in 1827 a foundling being then three days' old, was taken into the zeenanah of the late Nawab, for the purpose of being brought up; she was named Wyhudoolnessa Begum, that was familiarly called Misree Begum, and continued in the zananah during the Nawab's lifetime. That in the year 1834, the late Nawab, being possessed of a garden, called Jhukta Warree, directed it to be thenceforth called Misree Bagh; at the same time stating, in presence of several persons, that he had given it to Misree Begum; after which it was always so called. But Misree Begum being an infant, no specific appropriation was made of the rents of it. It is further asserted, that on the 8th February 1845, Misree Begum executed a deed of gift to Zeeroolnissa Begum and Rahroolnessa Begum, the infant children of Meer Jafur Alee, and shortly afterwards departed this life.

In deciding this claim, it is necessary, in the first place, that the validity of the alleged gift by the Nawab to Misree Begum should be established; evidence has accordingly been taken upon this point; Mohumlal, a writer in the Nawab's establishment, states that, until the year sumout 1891, this garden was called Hushmut Bagh, alias Jhutka Warru; but, in 1892, the Nawab having purchased two maunds of ripe mangoes from one of the tenants of the garden, and at the same time received a piece of kinkaut in part of the rent, caused him, Nohumlal, to write the name of Misree Begum on those mangoes, and sent them, with the piece of kinkaub, to that lady, with a message that the garden was a gift to her; he then desired him, Mohumlal, ever afterwards to call the garden Misree Bagh in the accounts, in lieu of Hushmut Bugh or Jhutka Warree, which has been done. The entry he made in the account on the above occasion is as follows:

A. D. 1833-34.

"A piece of kinkaub and ripe mangoes purchased from Jewer Bhugwan, a tenant of the Hushmut Bagh, alias Misree Bagh, credited in his account rupees 37; viz.*

	Rs.	*a.*	*p.*
A read piece of (kinkaub), rupees	32	—	—
Two maunds of ripe mangoes	5	—	—
Rs.	37	—	—

Note.—No mention is here made of the gift to Misree Begum.

An entry was also made by Madow Raw in the daily cash on the 30th mohrum, as follows:

"Rupees 37, on account of the tenants of Misree Bagh, a piece of kinkaub. Rupees 35, and two maunds of mangoes for himself; in this manner this item is credited."

He

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He says he cannot say who were present when the gift was made, as above stated, but that Futteh Mahomed Jemadar and others may have been so. The next witness called was Mirza Mahomed Allu Baigh, who states that, about five or seven years previous to the Nawab's death, his Excellency, after having taken his meal, came out one day from the mehel or zananah, on which mangoes had been brought from Jhutka Warree, and said he had given that garden in gift to Misree Begum, and that it was thenceforth to be called Misree Bagh.

He afterwards states, that when the baskets of Mangoes were brought, the Nawab was in the zananah, where some of them were sent as a sample by Daee Zeunb; that the Nawab afterwards came out, and said as above. The remainder of the mangoes, he says, were sent into store.

From the testimony of these witnesses it is quite clear that the gift cannot be considered established. But even if the transaction stated had actually occurred, as no proof is adduced to show that the garden was ever separated from the Nawab's estate, or any portion of the rents paid to the Begum in question, it became null and void by the Mahomedan law, which requires separation from the estate of the donor, and occupation and possession by the donee, to render a gift valid; under these circumstances, the gift to Misree Begum, not being established, it follows that the gift of the garden to the children of Meer Jafur Allee, is null and void. His claim is accordingly rejected.

(signed) *R. K. Arbuthnot,*
late agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

B. No. 3.

MEER JAFUR ALLEE begs to submit the following memorandum on behalf of his infant daughters, Zavool Neesa Larlee Begum Sahib and Rinoo Neesa Begum Sahib, to the agent of the honourable the governor, &c., respecting the composition and fees of the office of Wakaya Nagaree.

The late Nawab Meer Affzooloodeen Khan held, in addition to his title of Nawab, the office of wakaya nagaree, or the recorder of local events, which he inherited from his father, and to which was attached the right of receiving certain fees called lawa zins from the manufacturers, others in Surat and Randere.

In the year 1829 the British Government being desirous that the late should remit the fees on mangoes, rice, beatens, jewellery, chintz, copper, saltpetre, cocoanuts, dry fruits, and fish, and on the market of Nakhas Meer Bahair, and on the grain market then received by the late Nawab, he agreed to do, and the Government engaged to pay, in lieu of these fees, the sum of 325 rupees to him and his heirs in perpetuity, generation after generation, both male and female, as will appear from the order of the honourable the Governor in Council, dated the 7th of December 1829.

The British Government also paid to the late Nawab the sum of rupees 100, in lieu of the fees or mookat on mowra, and rupees 12 for the fees on tobacco, dried fruits, and dyeing places.

The Nawab himself farmed out and collected the other fees set forth in the annexed Schedule, but they have been since remitted by the Government to the inhabitants.

It is, however, submitted that an arrangement should be made, on the same footing as that entered into with the late Nawab, to pay a pecuniary composition of rupees 1,193 per annum, in lieu of the whole of the fees, to Zaoolnessa Larlee Begum Sahib and Runoonessa Begum Sahib, and their descendants, from generation to generation, both male and female.

(signed) *Jaffur Allee.*

Surat, 3 June 1845.

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Lawazins of Wakayanagaree of the City of *Surat*.—From the British Government.

	Rs.	a.	p.	Rs.	a.	p.
From the Custom-house mookat on mangoes, &c.	-	-	-	325	-	-
Mookat of Moura	100	-	-	—		
Ditto - on dyeing places	4	-	-	—		
Ditto - of dry tobacco	4	-	-	—		
Ditto - dried fruits	4	-	-	—		
	112					

From Farmers and Inhabitants.

Lawazins of four gates of the city of Surat	400	-	-			
Ditto from the town of Randere	85	-	-			

On the Tribes of the Tradesmen, &c.

Great measure men	60	-	-			
Small ditto	9	-	-			
Dholl merchants	10	-	-			
Contract of milk sellers	27	-	-			
Oil vendors	4	-	-			
Oil expressers	17	-	-			
Betel-nut sellers	4	-	-			
Pan-leaf sellers	4	-	-			
Copper and brass sellers	4	-	-			
Brass sellers	4	-	-			
Copper sellers	4	-	-			
Cochineal brokers	4	-	-			
Outhir sellers	4	-	-			
Sunchora sellers	4	-	-			
Silk sellers	4	-	-			
Soorungee makers	4	-	-			
Iron sellers	4	-	-			
Electuary intoxicating medicine sellers	4	-	-			
Lemon sellers	4	-	-			
Opium sellers	4	-	-			
Khundrung dyers, or dyers indurable colours	4	-	-			
Bunjara brokers	4	-	-			
Coral sellers	4	-	-			
Horn sellers	4	-	-			
Goolab and ubbeer sellers	6	-	-			
Firework makers	2	-	-			
Custard apple sellers	2	-	-			
Powetra sellers	2	-	-			
Vegetable sellers	60	-	-			
	271					
	Rs.	1,193				

Translation of a Copy of a Hookum Namah.

The King is pleased to order that Nusserub Deen Khan be exalted to the Bukshegaree of the office of Vakey Negaree in Surat, upon the removal of Fuzzil Allee Khan, and that he act agreeably to the tenor of his royal mandate with the dignity of one Kazaree Zaut and 200 horsemen.

The 1st of the month Rajab, in the 15th year of the Coronation.

11th of the month Rajub, in the year Fifteen, this seal was put	Fidwee Shahee Alum Balshahee, Ghazee Buckshee ul Mulk, Zulsiear ul Dowlah, Mirza Nudjeef Khan, Bahader Kaleb Jung	1st of the month Rajub, in the year Fifteen, copy of this was registered in the book of Bukshee ul Mulk.

After

After seeing this sunnud it is kept unaltered and confirmed. 3 May 1856.

(signed) *Jon^n Duncan.*

(True copies.)

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor.

DECISION by the agent, for the Honourable the Governor, on the claim of Meer Jaffur Allee to the Wakaya Negaree fees enjoyed by the late Nawab.

These fees are now abolished by the provisions of Act 19 of 1844. They consisted of certain hucks, of the nature of town duties, which the late Nawab levied at four of the gates of the city, and of a small cess on particular trades and professions, which he enjoyed in virtue of his office of wakaya negar, or recorder of news, which was conferred on his father, Meer Nusseeroodeen Khan by the Emperor of Delhi, and confirmed to him by Mr. Duncan, the Governor of Bombay, when Surat and its dependencies were ceded to the East India Company by the treaty of the 13th May 1800. Meer Jaffer Allee now claims compensation on account of them on the part of his daughters, the only surviving representatives of the Nawabs of Surat, on the grounds that Government engaged to pay the late Nawab and his heirs in perpetuity, generation after generation, both male and female, in lieu of a portion of these hucks, the annual sum of *Rs.* 325, which was duly received by him till his death; and further, that it had paid him annually the sum of *Rs.* 112 on the same accounts; the remainder he collected direct from the people by means of his own establishment, which yielded him an annual income of *Rs.* 756, making the entire claim *Rs.* 1,193 per annum, which he prays may be awarded to his children.

In the first place, I have to remark that the letter from the Bombay Government, quoted by Meer Jaffur Allee in support of his claim, is not written in the terms which he states. The acting collector of sea customs in Guzerat had mentioned in his report to Government, of the 7th November 1829, that it was very desirable to draw into the hands of Government all the hucks of huckdars in the Meer Behr and Gallamundee departments at Surat; and with this view proposed the payment of compensation to them; the Nawab of Surat was one of their number, who agreed to receive, in lieu of his claims, the sum of *Rs.* 325 per annum. In answering the acting collector's letter, Government simply stated, that it approved of the revised Mokat rules, which accompanied his communication of the 7th November, and were pleased at the same time to sanction the arrangement suggested by him for the future payment of huckdars. The Nawab's name is not even mentioned in the letter; and upon what grounds Meer Jafur Allee asserts that Government agreed that the sum sanctioned should be paid to him and his heirs from generation to generation, male and female, as set forth, I am unable to discover.

The rights which the Nawab enjoyed at the time, it may be inferred from the Government letter, were confirmed to him, but nothing more. It will now, then, be necessary to ascertain what these were; and for this purpose the nature of the grant, and the circumstances under which the rights conferred by it were continued to Meer Nusseeroodeen Khan after the cession of Surat, have to be examined.

It is said that the office of Wakaye Negar was originally held by the Nawabs of Broach as a marriage portion on some occasions of an intermarriage in their families; but the point is not clearly established. Be that, however, as it may, it is certain the appointment rested with with the Courts at Delhi, as the order conferring it upon Meer Nusseeroodeen Khan, who was in the enjoyment of it at the cession of Surat, is now produced. From an inspection of that paper it is quite manifest that the office was solely of a personal nature, to which the sons of the Nawab had no claim whatever to succeed as a matter of right.

It would appear, however, that when Mr. Duncan, the Governor at Bombay, was at Surat in 1800, for the purpose of negotiating the treaty of that year, that the Nawab's Dewan Kirparum, after the treaty was signed, gave him a paper containing several requests on the part of his master, one of which related to the office of wakaya negar.

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Mr. Duncan, as appears from his diary, took the paper from Kirparum on a memorandum, as it was not sealed or attested by the Nawab, although drawn up in his name, and said he should consider the subjects, and as far as was consistent with the public advantage and security of the revenue, would be glad to do anything to satisfy the Nawab. Subsequently Mr. Duncan had an interview with Meer Nusseerodeen Khan and their Bukshee and their sons, when the subject of the paper of requests was discussed. After the meeting, Mr. Duncan made a minute of his proceedings, which is dated 1 July 1800. In it are these words, "Alluding to those articles of the paper of requests left by the Nawab on the "13th May, I told him that the wakaya negaree should be settled in his own "name or that of his son, as he had requested, since I had found that the appli- "cation of the son of the late Nawab of Broach had been sufficiently investi- "gated during the chiefship of Mr. Griffiths and not found valid, more espe- "cially when put in competition with the superior claims of himself, and "noticed my being happy to have it in my power, in this instance, to gratify "him, and which, I added, would be suitable to my disposition on any other "occasions that might occur; with all which kind expressions the Nawab "seemed well satisfied, and he and the bukshee and their sons soon took "leave."

He afterwards wrote that the confirmatory grant of the wakaye negaree was to be made out in the name of the Nawab's eldest son, Ufzooloodeen Khan; but this was never done, as Mr. Duncan simply endorsed the original order from the Court of Delhi, conferring the appointment on Meer Nusserodeen Khan in these words: "After seeing this sunnud, it is kept unaltered and confirmed. "(Signed) *J. Duncan.*"

There is nothing in this endorsement on the proceedings above-mentioned to make it appear that it was Mr. Duncan's intention to convey to Meer Nusserodeen Khan, or his son, any hereditary title to the office of wakaye negaree or the emoluments attached to it. It simply sanctioned their continuance on the terms under which they were at that time held, and which, as I have stated, were purely of a personal nature, and conveyed no right whatever to the heirs or successors of the grantee. Mr. Duncan, with the view of gratifying the Nawab, was probably willing to extend the grant to his son, although this even was never formally done; and on that account Government, on the death of Meer Nusserodeen Khan, would have been fully justified in resuming the right. Meer Upzooloodeen Khan, however, was permitted to enjoy the office till his death, thus fulfilling to the letter the expressed intention of Mr. Duncan that the appointment should be settled on his son. On the death of Meer Upzooloodeen Khan, as a matter of course, it should lapse to the State.

With reference to the order from the Emperor of Delhi, bearing Mr. Duncan's signature, it is somewhat remarkable that in the proceedings of a committee which was appointed under instructions from Government, dated 30 August 1831, to investigate and report upon certain claims which had been advanced by the late Nawab Meer Upzooloodeen Khan, among which were his wakaye negaree rights, no notice appears to have been taken of this paper. The inference is, that it was the Nawab's intention to conceal it, lest it should lead to a discussion of the real nature of his title, which he of course wished the committee to believe was of a hereditary nature, and which they indeed, by Mr. Duncan's Minute to which they had access, seem to have admitted, although in a somewhat qualified manner, in the seventh paragraph of their Report, dated 24 August 1832, they write as follows: "The general title of his Excellency to "retain these wakaya negaree hucks may be assumed to have been admitted "by Mr. Duncan, as the committee collect from the Parliamentary Papers of the "year A. D. 1800, wherein the Nawab is represented as having preferred a "memorandum stating his right to them; and though no positive assent seems "to have been given by the Government to it, yet the uninterrupted enjoyment "of them ever since by his Excellency may be taken as an acknowledgment of "his title."

My decision under these circumstances is, that neither the present applicant nor the heirs of the Nawab are entitled to succeed to the wakaye negaree rights of the late Nawab, which, on his death, lapsed to the State.

The collections from this source which have been made since the management of the Nawab's affairs has been entrusted to the agent for the Government, should accordingly be paid over to the collector of land revenue, to be brought

to

to the credit of Government. An intimation at the same time being made to him, as well as to the collector of Customs and Excise, that the wakaye negaree rights of the Nawab having lapsed in consequence of his death, the payment of any sums which had been allowed in part compensation of these hucks should now be discontinued. 3 May 1856.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the
Governor at Surat.

Baroda, 3 November 1845.

B. No. 4.

Translation of a Petition from Meer Akbur Allee Khan, dated Baroda, 17 Zilhej 1259 Hizree, corresponding with 8 January 1844.

This is my petition from the day of our marriage with the Nawab's daughter. We, Meer Jaffer Allee and myself lived with his Excellency, according to agreement, as his heirs-apparent. We also kept more or less of our private effects as well as the jehez (the jewels and other property given to a bride on her marriage), etc., in his house. My brother, Meer Jafur Khan Bahadoor, dearer to me than life, still lives there as heir-apparent. Sometime after my marriage, in accordance with the orders of my most excellent master the Mahraj Sahib, I went to Baroda. While there I received the melancholy intelligence of the death of my wife. On hearing it I immediately returned to Surat, and remained there 40 days (the period of mourning ordered among Mahomedans). From the beginning the whole of the effects and property of my family were entrusted to the mother of my wife, who had the charge of bringing her up after the death of her natural mother, and who has now regarded her with the same affection. After my wife's death I allowed all my wife's property to remain in her charge as heretofore. The Nawab's people had no control over it, nor was it included in his estate. It remained in the house in which I had lived. The Nawab had nothing to do with it. It was my sole property, and of right belonged to me; nor has any one a claim to it. When I was at Baroda, the Nawab caused a separate memorandum to be made of it, to be written and delivered to Mirza Mahomed Allee Baigh. I have, therefore to request you will permit the property to be opened and inspected, for some of the articles, which are woollen, &c., are spoiling. (The following gardens also) were the sole property of my wife, viz. Folwarree, Eleahi Bagh, half share of a bungaloe situated in the Autaway continent (Nasmut Bagh), a third share of the village of Outyadra, and half the Durya Mahel. No one has any claim to them. I hope, therefore, after investigation, they may be released.

(signed) *Meer Akbar Allee Khan.*

Translation of a Letter from Meer Akbar Allee Khan to the Agent for the Honourable the Governor, dated 20 April 1844.

In proof of my right and my property, and of the jahez, &c., which were made in gift to my late wife, two memorandums in Guzrathe and Persian language are herewith forwarded, and hoping the investigation may be conducted according to them, from which my right will be observed by you.

(signed) *Meer Akbur Ally Khan.*

Memorandum on the following subjects.

1. When my marriage took place, and the dowry from the house of the Nawab was brought, Mirza Abdoola Baigh and Mirz Mahomed Allee Baigh gave a memorandum of the effects of the dowry, and the keys of the chest containing those effects, to Meer Surfraz Allee Sahib, my honoured father, who addressed them thus:—"Tell the Nawab, on my part, that if these effects have "been sent for the purpose of showing the people of Surat they have (already) "been seen by them, and let them be taken back, but if they were forwarded to "me after the customs of the nobles, we have our free power over them." Mirza

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Mahomed Allee Begh immediately took this message to the Nawab, and brought an answer to say that he (the Nawab) had given both his beloved daughters in his filiation, and had also delivered over the effects of the dowry to him, which he had granted to him, that he may exercise his free power over them; he may give them to any person he liked, or do with them as he pleased; they depended on his will, for it was not the custom of his (the Nawab's family), to take back paraphernalia. The old servants of the late Nawab Mirza Mahomud Allee Baigh, Mehta Mohunlal, and Mehta Ambaram, and others, are witnesses now existing.

2. My wife has granted to me during her lifetime, whilst in possession of her reason and senses, about two years before she fell ill, the household effects in part, and whole of the dowry, &c., along with the gardens and property, in the presence of her mother, teacheress, my mother, and my female attendant, and others; after this, during her indisposition, when I was in Baroda, she greatly pressed her mother in causing her to write a letter to me, to remind me (of it). Copy which I enclose for your perusal.

3. After the decease of my wife I came to Surat from Baroda, and lived here up to the 40 days of the mourning. The household effects in part and whole as before were in charge of her mother, who was in place of her real mother and myself; also, in consequence of her motherly affection towards me, left them in her charge, and likewise the late Nawab exercised no interference in this.

4. When on the first anniversary of the obsequies of my wife, I came to Surat, her mother told me that my effects were deposited as before, and that I should have a memorandum of them at this time. I was particularly obliged to go to Baroda, and replied to her in consequence, that I fully confide in her, and that I had no leisure then to make out a memorandum, and that they should remain as they were; this was complied with. After I had left this for Baroda, the mother of my wife by chance became very ill; she then sent for Beejan, the nurse of Futteh Mahomud Jemadar, by the permission of the Nawab, and sent this representation to his Excellency, mentioning that there was no reliance on man's temporary life, and that the goods of Meer Akbar Allee Khan were deposited with her as before, and that he not being present here, his Excellency should cause a list of them to be made out. The late Nawab then, agreeably to her request, granted her wish, and ordering the goods to be locked up and sealed in my residing house, the keys he gave in charge of the mother of my wife. This list he kept separate from the records in charge of Mirza Mahomud Allee Begh, and wrote to me to Baroda to inform me (of it), the copy of which is herewith enclosed.

5. In confiscating properties, it was the custom of the Nawab that when he seized the property of a person, it was ordered to be brought in his presence, then either mingled with the effects of his state, or distributed it amongst any persons; such was the case with the effects of his late mother and his late young wife, after they had departed this life, and the goods of Mirza Abdoolah Beigh and Wullee Mahomud he seized upon, and exercise his power over them. Since the above effects were my property, he deposited them in the place of my residence, locked them up, and the keys he made over to the mother of my wife. The dresses of mine, and those of my children remained mixed up with the other goods as usual; if he had anything else in his mind, surely he would have separated mine and my children's things from the goods of my wife, which he would have sent for in his presence.

6. Several daughters from the family of the late Nawab had been married, and died, but the paraphernalia, etc., according to the custom of his family, were not taken back from the husbands; from those I write the following names for your consideration:

Lall Begum, the daughter of Nawab Kayemoodowlah, the late, was married to Meer Suddrooddeen Khan, the late Bukshee.

Ameena Begum, the daughter of Begum Neezamoodeen Khan, the late; this lady was married to Syed Goolam Russool, the priest of Randier.

Sooltana Begum, the daughter of Meer Moollnoodeen Khan, who was married to Meer Fuzloo.

From the above ladies Ameena Begum died during the lifetime of her father. The effects of her dowry in part and whole remained in the house of the Randeree priest,

priest, and no reiterated inquiry was made, as this is the custom of the family of the Nawab not to take back the goods of the dowry from the husband after the death of the daughter.

7. Formerly, when Mr. Elliott sent a memorandum inquiring about the goods of my wife, the Begums from this have sent to him two memoranda in reply, dated 29th August, 10th September, 1842, A.D. I beg to refer you to the two documents.

8. It is constant custom in the family of the late Nawab, that the daughters from his family were generally given in marriage amongst gentlemen, and died; the goods of dowry have not been taken back from their husbands; and such practice and mode are to be relied on according to the sacred law. E. G., the Arabic passage of the proposition from the Rule 3 of the Book of Ashbah Wunnuzoyer is written here, customs is (to be held) firm; and this originates in words of the blessed Prophet, "What is considered virtuous by Mooslims it is virtuous "with God."

9. A woman who has granted to and conferred on her husband the property and goods of her dowry, and other property of her own, during the lifetime of her father, and after her decease the father has evinced no interference against the husband, under this circumstance the goods become the property of the said husband according to the sacred law, for this reason, that alienation and donation are of the cause of ownership. E. G., the passage of the Arabic proposition inserted here, from the word on the subject of proprietorship, Part 3 of the book above mentioned. The causes of ownership are exchanges of properties, marriage portions, exchange of property for divorce, and inheritance, and donation.

(signed) *Meer Akbur Allee Khan.*

(True translation.)

(signed) *R. K. Arbuthnot.*

TRANSLATION of a Letter from the Mother of Burree Begum Sahib, the late, to Meer Akbur Allee Khan Bahadoor, dated 23 Mohrum 1256, A. H.

SINCE you left this for Baroda, I do not for a moment forget you. May God allow me with your visit, with all speed; but from the time you left this, the constitution of Burree Begum Sahib continues daily languishing and concerned, and she often speaks that Burra Khan Sahib, should soon come here. Yesterday, in order to call you, Burree Begum Saib, whose life may prolong, is much remembering you, as this day she expressed in a strongest term, in the presence of myself and your mother, that I (she) had (long ago spoken in the presence of you both, that I (she) have given in gift the whole of her effects and her own property, together with dowry), and although you knew before this circumstance perfectly well, but I mention it at present, merely to remind you, that my husband Meer Akbur Allee Khan Bahadoor is the owner of whatever goods and property belonging to (her) me. It is therefore proper and better, that you should reach this place immediately in any manner, as it will give a satisfaction to her in this state of her indisposition. I therefore wrote that you should, immediately on the receipt of this, form an intention of coming here in this matter; my beloved daughter Burree Begum Sahib, has given me strictest injunctions, that by any manner, you should start for this place. What more can I write? May the days of your satisfaction and happiness be always. Burree Begum Sahib desires her salem to the sister, and accept respects from Khanum Beebee.

The devoted and well-wishing servant Ambaram, after respects, represents that, in consequence of illness, Burree Begum thinks of you with heart and soul; it is requisite that you should come soon.

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3 May 1856.

TRANSLATION of a Letter from the late Nawab to Bure Sahib (Meer Akbur Allee). A. C.

I WROTE to you before this to get some fountains made; you will have understood the contents, and am sure you have had them prepared. I therefore write, that if they are ready, you should send them, and if there is a delay, have them prepared soon, and let me know; besides, in these days, I have received no letter containing your welfare and health, with the news of that quarters; this renders me very sorry. It is requisite that you should always give me the pleasure by writing of your welfare. The mother of Burree Begum the late, remains now-a-days very unwell on account of the eternal separation from and natural grief for the daughter; agreeably to the request of her mother, I have sealed up all her effects, together with the goods of the dowry, and having caused a separate memorandum to be written according to custom, have placed them in your residence. Rest satisfied with what I have done, and write to me always about your health and welfare; beyond this, my blessing to you.

Written on the 19th Sufur 1257, A. H.; 12th April 1841, A. D. Blessing from your mother; Malika Zumanee Begum and Wahidoonissa Begum present their respects.

(True translation.)

(signed) *R. K. Arbuthnot.*

TRANSLATION of a Letter from Meer Akbur Allee Khan to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable Governor. A. C.

I RECEIVED your memorandum, dated 27th March 1845, on the subject of presenting the documents and proofs regarding Phoolbaree, and other property, to establish the claim. In answer, it is to observed, that the copy of the bond of Phoolbaree is herein enclosed, and the copy of the bond of the village of Oontyadra has been submitted by her Highness the Begum, with the memorandum, dated 1st November 1843, by which it will be rendered obvious to you with regard to the right of the said village. Several proofs having been forwarded with the petition, dated 20th April 1844, you will be pleased to keep them along with the case from the records. Besides this, witnesses, and other proofs, will be produced at the time of investigation. What may I trouble you more? May your life and health be increasing. Written on the 29th April 1845, corresponding with the 21st Rubeerossance 61, Tuesday.

Letter of

(signed) *Meer Akbur Allee.*

(True translation.)

(signed) *R. K. Arbuthnot*, late Agent.

MEMORANDUM given in by Mr. *Ayrton*, on the part of Meer Akbur Allee.

THE agent of the Honourable the Governor having requested me, Meer Akbur Allee Khan, to state what portion of the moveable property, taken possession of by the agent after the decease of the late Nawab Meer Afzooloodeen Khan, I claim as my own, and by what right, I beg to submit the following memorandum of the same:—

In the year 1834, I came to Surat, from Baroda, for the purpose of being married to Nujee Boolnissa Begum, one of the daughters of the late Nawab, on which occasion the Nawab, with great state and ceremony, publicly sent to me at his house in Durjah Mahele, where I was residing with my father, presents of ornaments, clothes, and other effects, as the portion of his daughter. The officers and servants of the Nawab accompanied the presents; and on their displaying them at our house, my father inquired of them whether they had been sent for display, or whether as a gift, to be retained by my intended wife and myself. The officers, upon this, went back to the Nawab, and, on their return, informed my father that the Nawab desired to present them as a gift, without reserve. The effects were then handed over to me, according to an inventory which was brought with them, together with a copy of the inventory which is still in my

3 May 1856.

my possession. After two days, the marriage took place, and my wife came to reside with us at the Durga Mahel; but, in about a month, the Nawab desiring that we should live near him, set apart a portion of his palace, called Kumanee Dinvazzar, for our residence, which we thenceforth occupied.

The ornaments and effects, excepting a few which we kept in the Durga Mahel, were used by my wife, and kept in our dwelling under our control, without being in any way reclaimed by the Nawab.

In the year 1840 I went to Baroda, to visit my father and his Highness the Guicowar, but shortly after my departure my wife was taken ill, and died at Surat. Upon this I immediately came back to Surat, and after the mourning of 40 days for my wife was over, I returned to Baroda, leaving all the effects of myself and my late wife in the rooms occupied by us, but in the charge of Bhooah Ujeeb Bahar, a female formerly in the Nawab's service, by whom my wife, when young, had been brought up, with the exception of those which remained in the Durgah Mahali.

Nujeeboonissa Begum, about a year before her death, gave the whole of her property to myself, and shortly before her decease expressed a wish that it should be given to me, as stated in the letter of Bhoo Ujub Bahar, dated the 23d Mohurum 1256, submitted herewith; and it was customary in the Nawab's family for the husband to retain his wife's portion at her decease, in the event of his being the survivor, of which many instances may be cited.

The Nawab either regarding those circumstances, or his assurance to my father at my marriage, but by whatever motive actuated is immaterial, in consequence of Bhooah Ujeeb Bahar being ill, had the effects in my rooms compared with the original inventory, in which any alterations which were found to have taken place, since they were presented, were noted down, and he then directed them to be kept as they were, and as I was at that time at Baroda, to be sealed up for me as my property, that they might be secured for me at my return; and they were accordingly kept inthe house occupied by my wife and myself, in which Booah Ujeeb Bohar, who had resided, was still living separate from the house of the late Nawab; and he at the same time caused a letter to be written to me at Baroda stating the circumstances, which I am ready to produce.

The Nawab died before I had returned from Baroda, and the effects consequently remained in deposit, where they had been placed in the charge of Booah Ujub Bahar, who had recovered from his sickness, until they were sealed up by the agent.

The effects in the Durgah Maheli, which are mentioned in the inventory, remained there on my wife's decease; but the key of them was retained by Booah Ujeeb Bahar, whilst the key of another room was kept by my brother, who had some property there also, until it was taken possession of by the agent.

It is not disputed that, according to the Mahomedan law of inheritance, the late Nawab, on the death of my wife, would have become entitled to a half of her property; but the transaction above noticed, it is confidently asserted, operates as a bar to any such claim being now made on his account, because it was a clear acknowledgment of my right to the whole, according to the custom of the family; it being a maxim amongst Mahomedans, that custom must prevail over law, or it was a positive rule or order made by him on the occasion, he being the absolute ruler of himself and family, not subject to the law; or it was a new gift from him to myself, which cannot be reclaimed, and, in short, was an entire relinquishment of any claim on his, the Nawab's part, to the property.

I therefore claim all the effects mentioned in the original inventory, which is now in the hands of the agent, as my own property, and respectfully protest against their being disposed of, or retained by the agent for the Honourable the Governor, &c., as the effects of the late Nawab.

(signed) *Akbur Allee.*

Surat, 12 May 1845.

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3 May 1856.

OBSERVATIONS on the Claim of Meer Akber Allee, to the property possessed by his late wife, Nujeeboonissa Begum, in her lifetime, submitted for the consideration of the Agent for the Honourable the Governor, by Mr. *Ayrton*.

THE claim of Meer Akbur Allee Sahib, depends upon the consideration of two questions.

1. Had the Nawab relinquished all claim to her property in his lifetime in favour of Meer Akbur Allee Sahib? for if so, there is an end of all question; but, if not, what position did the Nawab leave the property?

2. If it be considered that the Nawab had no power to bind the rights of Meer Akbur Allee Sahib, after the death of his wife, or if it be considered that the Nawab held the property in abeyance, then did Nujeeboonissa Begum effectually make over the property to Meer Akbur Allee Sahib, in her lifetime, so as to give him a right to it on her death?

On the first question, the circumstances under which the property was sealed up by the Nawab, coupled with the declarations at the time, that it was to preserve it for Meer Akbar Allee Sahib, in consequence of the sickness of Booah Ajeeb Bahar, and the letter of the Nawab to Meer Akbur Allee Sahib, taken in its colloquial sense, the goods being at the time in the Mahel of Meer Akbur Allee Sahib, all show that the Nawab relinquished them in favour of Meer Akbur Allee Sahib.

On the second question, Meer Akbur Allee Sahib, after his relationship with the Nawab had ceased, and whilst he was going and coming to and from Baroda, and had gained an independent income derived from his employment there, could not be considered subject to the Nawab's authority, or his dependant, nor could the Nawab exercise any control over his property; the rights of Meer Akbur Allee Sahib, immediately on his wife's death, became absolute and indefeasible.

If the Nawab's acts are considered to have been equivocal, then it must now be presumed that he intended to do whatever was right and proper; it cannot be presumed that he intended to commit injustice, as such a presumption would be against honesty and morality.

The gift of Nujeeboonissa Begum to her husband, about a year before her death, was made in the presence of several persons, and of Meer Akbur Allee Sahib himself, and could have been confirmed, if necessary, by the witnesses; but it was placed byond dispute by the letter written by Booah Ajeeb Bahar, by direction and in the presence of Nujeeboonissa Begum, shortly before her death, expressly acknowledging and confirming the gift. Now, between husband and wife, residing together, there is no necessity for a transfer of possession of property, the possession of the wife is that of the husband; and so of the converse. The property is sometimes, in fact, enjoyed in common, and is in common custody. The gift to the husband is valid by words, where there is the property to give; for instance, I give all these things, or all my effects. The taking possession by the husband is sufficiently indicated by his being present and assenting to the gift. But in this case the mahel, in which the effects then were, was that of Meer Akbur Allee Sahib, expressly set apart for and given to him as his residence, and it is called his place in the Nawab's letter to him; the effects were therefore, at the time of gift, in his own house, and, in law, in his own custody.

The letter of Boowa Ajeeb Bahar, written by Nujuboonessa Begum, confirming the gift, is in itself sufficient to give a right, for the actual presence of the husband to take the property in his possession was not necessary, for the reason above stated.

The propriety of all these proceedings is shown by the custom of the Nawab's family, and it may be added of other noble families; the custom is alone sufficient to confer a right to the whole property on Meer Akbar Allie Sahib, but it must at least be presumed that the Nawab was acting, and would have acted, in accordance with that custom, and therefore he relinquished all claim to the property in favour of Meer Akbar Allee Sahib.

Surat, 2 July 1845. (signed) *Akbur Allee.*

MEER AKBAR ALLEE begs to submit to the Agent of the Honourable the Governor the following Memorandum of the landed property given to the late Nujeeboonissa Begum by the late Nawab Meer Afzoolooden Khan in his lifetime: 3 May 1856.

FOOLWADEE.—On the 3d June 1838, the late Nawab executed a deed of gift of the garden, called Foolwade, to Nugeeboonissa Begum, and the rents of it were paid over to her mother during her infancy, and until her marriage, when they were paid to herself.

The circumstances attending the gifts of this property by the late Nawab, his wife, and Nujeeboonissa Begum and her sister, are set forth in the memorandum delivered to the agent by the widow of the Nawab.

One-third of the Ootydra village of the Hasmutbrugh, and of the Diviya Mahe.

This garden was at my marriage given by the late Nawab to Nujuboonissa Begum, but in consequence of the Nawab being in debt, he directed the rents to ee carried in account towards the expenses of his house.

Ellihee Bagh, situated near the Wiveyaver Duwajah.

Shortly after my marriage, the Nawab requested me to reside near him, and then gave to my wife for her residence this house, which she occupied, and until her death; after which it remained in the charge of a female, named Bhoo Ujub Bahar, who had brought her up, and always resided there with us.

A house called Cummand Duryivgah, adjoining the palace.

On the death of Nujuboonissa Begum, the late Nawab gave directions to send the rent of Hushunt Bogh into the zunanah, as theretofore, and from thence the third share was sent by his direction to Bhoo Ujub Bahar, and sometime afterwards, on the occasion of the rent of other gardens being sent into the zunanah, to the wife and surviving daughter of the Nawab, he directed the rent of the Foohoady to be retained in deposit until my return from Baroda, and then paid to me, but in consequence of his dying before my return it was not to be paid.

Surat, 27 May 1845. (signed) *Akbur Allee.*

To Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, Surat.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 24th instant, requesting me to pay to the estate of the late Nawab one-half of the dower of my late wife, in reply to which I beg to submit for your consideration the following facts, which I trust will satisfy you that this demand should not have been preferred.

I have already handed to you a letter addressed to me by Boowa Ajub Bahar, on the 20th April 1844, agreeably to the desire of my late wife, from which it plainly appears that the dower settled on my late wife was granted and relinquished to me by herself in her lifetime, and this fact can also be readily established by several witnesses; but independent of this concession on the part of my late wife, by which all question was obviated, no claim would or could have been preferred by the late Nawab, as it is well known that, amongst the noble families in India, it would be contrary to established custom for the relations of a deceased wife to claim any part of her dower from her husband; indeed, it would be regarded as disreputable to prefer such a claim.

The late Nawab having regard, no doubt, to these circumstances, never in his lifetime made the slightest allusion to the payment of my wife's dower, and therefore I feel fully justified in declining to comply with your request.

I have, &c.

27 June 1845. (signed) *Meer Akbur Ally.*

(True copies.)

(signed) *R. K. Arbuthnot,*
late Agent.

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3 May 1856.

Decision by the Agent for the Honourable the Governor on the preceding Claims.

Jewels and Property of Nujeeboolnissa Begum claimed by Meer Akbur Allee.

The jewels and other property which are here claimed belonged to Nujeeboonissa Begum, a deceased daughter of the Nawab, and the wife of Meer Akbur Allee. Their marriage took place in April 1834, after which he resided with his father-in-law, at Surat, till 1839, when his wife and children having all died, he returned to Baroda, to live with his father Meer Surfuraz Allee. The Nawab died on the 8th August 1842; Meer Akbur Allee's claim was first brought forward in a petition, dated Baroda, 8 January 1844. It is couched in very general terms, and does not specify the grounds on which his claim is put forth. Subsequently, on being desired to state under what circumstances this was made, he forwarded a memorandum to the agent at Surat, with a note, dated 20 April 1844, in which he asserts that his wife had, about two years before she fell ill, bestowed upon him, in gifts, part of her household effects, the whole of her jehez, etc., and certain gardens and other property. Under these circumstances, it became necessary to ascertain the real state of the case, as the property was found, at the time of the sequestration of the Nawab's effects, deposited in the house formerly occupied by his daughter and Meer Akbur Allee, in rooms which were sealed with the Nawab's seal. These rooms were not opened at that time, as objections were raised to this course by the widow and daughter of the Nawab; but the agent's seal was affixed to them, pending the decision of the government of India on the question of the succession of the Nawabee. When that was received, the doors were opened in the presence of the agent, and jewels of considerable value discovered, as well as the wearing apparel of Nujeeboonissa Begum and some things belonging to Akbur Allee, of which complete inventories were made, and the jewels taken and deposited in the collector's treasury. The clothes, etc., after being aired were sealed, up as before. The jewels, etc., there is no reason to doubt, actually belonged to Nujeeboolnissa Begum, the wife of Meer Akbur Allee, and consisted, for the most part, of articles which had been given to her by her father, at the time of her marriage. That she had the power to bestow them on her husband is equally certain. The only question is, did she do so; and if not, to whom does the property now of right belong?

The evidence adduced by Meer Akbur Allee in support of his assertion that the property was given to him by his wife is confined entirely to the testimony of Booah Ajub Bahai, the person whom he designates as the mother of Nujee Boolnissa Begum, but who in reality was a female slave of the late Nawab who had once been his concubine, and to whom he afterwards assigned the task of bringing up Nujeeboolnissa Begum on the death of her own mother, which event happened soon after the birth of that child. The testimony of such a person is not of course deserving of much credit, especially as there is no doubt she is entirely in the interests of Meer Akbur Allee, and would depose exactly as he might desire her; allowing, however, that what she states is correct, still her evidence is wholly insufficient, according to the Mahomedan law, to establish the validity of the gift. She states that the Burree Begum, by which appellation Nujeeboolnissa was usually designated, one year before her death communicated to her, that she had given her property to her husband, Akbur Allee Khan, and that Ruja Begum, his mother, and his other mother Booah Roopa, were present at the time as well as two other women;* and upon being asked where Akbur Allee was, she said he was here, meaning in Surat. Now it does not appear from this evidence that she was herself present at the time the gift was made, nor are any of the persons named by her called to prove the fact, we are simply informed that she was told by the Burree Begum a year before her death that she had given her property to her husband; and as Meer Akbur Allee, in his memorandum, and states it was bestowed on him two years before his wife took ill, the inference is, that she, the witness, had not been made aware of it till then. But by the Mahomedan law it is requisite to render

* It is doubtful, by the wording of the deposition, whether these persons were present at the time of the gift, or when the Begum communicated the fact to the witnesses.

render a gift valid, that it must be made in the presence of two male or one male and two female witnesses, not slaves, who must be able to depose to the fact, and before whom the donee should expressly state he accepts the property bestowed. A gift is further not valid if it is not immediately separated from the state of the donor, and given into the occupation and possession of the donee, which is not attempted to be shown was done on the present occasion. 3 May 1856.

The letter produced by Meer Akbur Allee, which he asserts was written to him by Ajud Bahar (who also deposes to the fact), by desire of his wife, not long before her death, when he was at Baroda, has evidently for its object to tell him that his wife was very ill, and to request his immediate return to Surat; but the opportunity is not lost of the writer also informing him that the Begum had that day pointedly said, "she had formerly declared that she had given away "the whole of her jehez to her husband, and now did so to remind them, "the persons whom she was addressing, that her husband was the owner of "whatever goods and property belonged to her." Now, the person who wrote the letter for Ajub Bahar is a carkoon, by name Ambaram Madowram, formerly in the service of the Nawab, now in the pay of Meer Jafur Allee. He deposes to having heard the Begum say, "You are to write whatever my dear mother says," upon which he wrote as above. The Begum, he adds, was very ill at the time, and was lying before the curtain while Booah Ajub Bahar was inside, and no one else was present. The letter appears to me of doubtful authenticity, but as it really conveys no more than is stated by the former witness in her deposition, viz., that she was told by the Begum that she had given her property to her husband, its truth is hardly worth inquiring about, especially as it is not attested, and could so easily have been written after the Nawab's death, that it could never be received as good evidence in support of the claim now advanced. Moreover, the assertion of Meer Akbur Allee, in the memorandum which accompanies his letter of the 20th April 1844, that it was expressly written to remind him of the gift, is not borne out by the contents.

Ajub Bahar further states, that "a year and 15 days after the death of the "Begum, she herself was taken so ill that her life was despaired of, on which "occasion she sent to the Nawab to say that the property of the elder Begum "was lying about, and that a list should be made of it in order that it might be "kept in some safe place to prevent its being lost, and that the Nawab there-"upon sent Mirza Mahomed Allee Beg, his karbharee, and Mahun Lal and "Madooram, to examine the property, who also made a list of it and shut it up, "and that Mirza Mahomed Allee Beg gave her the key, on which she begged "him to represent to the Nawab, as she had no hopes of living; that the "property should be sealed up, that it might be given to Meer Akbur Allee "on his return. Mirza Mahomed Allee Beg, she adds, delivered this message "to the Nawab, and afterwards came back and reported that the Nawab did not "wish to seal up the property, but at her request it should be done, and upon "Meer Akbur Allee's arrival it would be given over to him." The Mirza Sahib accordingly sealed it up, and left the key with her, and that it "remained "with her till taken from her by the agent for the honourable the Governor at "Surat." She adds that some of the property belonging to the Begum was in the Durya Mehel, and remained also in her charge.

But, unfortunately for Meer Akbur Allee's claim, the determination of this witness to give evidence in his favour is put beyond doubt by the contents of a letter, filed in this case, from herself to the agent, dated in February 1844, almost immediately after Meer Akbur Allee had brought forward his claim to his wife's jewels, &c., and when the fact of the Nawab having taken possession of them by affixing his seal to the rooms in which they were deposited, was considered prejudicial to it. She then wrote, "that when a list of the effects was made out "at her request, she objected to their being sealed up, but that the Nawab said "there was no impropriety in this, because it would remove all anxiety on her "part, besides which, the things would be more safe; and as he had given a "separate memorandum of them to Mirza Mahomed, Allee Beg, which would "not be placed on record, they could be given to Burra Sahib (Meer Akbur "Allee) on his return." She however distinctly avers in her deposition, which was taken some time afterwards, when it was considered advisable to give a favourable colouring to the apparent appropriation of the jewels, &c., by the Nawab, that the Nawab had no wish to seal up the effects, but did so at her particular request; a discrepancy between her letter and deposition which is

3 May 1856.

quite fatal to her veracity. The truthfulness of her assertion may also be judged of by the evidence of Mirza Mahomed Allee Beg, who deposes as follows: "*Question.* Who took charge of the articles of the Jehez of Nujuboolnissa "Begum, the elder daughter of the Nawab, after her death? *Answer.* The "Nawab made lists of them, and placed them in the house of his deceased "daughter, and the doors of the room were sealed with the Nawab's own seal.— "*Question.* How long after the death of his daughter did the Nawab cause the "articles to be shut up? *Answer.* One year subsequent to the death of his "daughter.—*Question.* In whose possession were the articles left for one year? "*Answer.* They were in the possession of a concubine of the Nawab, by name "Ajub Bahar. The mother of his eldest daughter died on the sixth day after "her birth, and from that day the child was taken care of by Ajub Bahar.— "*Question.* Was any list taken of the articles of the Jehez by the Nawab before "they were shut up? *Answer.* No new list was made; the articles were com- "pared with the list (which had been made at the time of his daughter's "marriage), and is now produced, and afterwards they were shut up; I was "present at the examination.—*Question.* Who else was present at the examina- "tion? *Answer.* I, Mohunlal, and Ambaram were present.—*Question.* At the "time of the examination, who handed over the articles when they were deposited "in the room? *Answer.* A female slave of the Nawab's eldest daughter, by "name Gool Guyan, and four or five other women performed this service. "After they were placed in the room, I put a seal on the door by order of the "Nawab; the articles were placed in two rooms, and I put two seals on them.— "*Question.* When and where did the Nawab give you this order? *Answer.* It "was given in the new Mehel, after the death of the elder Begum.—*Question.* "Why did you not shut up the articles for one year? *Answer.* According to "the custom of the Mahomedans, the articles could not be shut up (it would "not have been proper to shut them up) for one year, as they belonged to the "Nawab; they were shut up after a year (the meaning of this is, that as they "belonged to the Nawab, there was no risk of their being made away with; it "was therefore unnecessary to shut them up till the expiration of the year).— "*Question.* Was any difference found in the articles when compared with the "list? *Answer.* They were all found correct; some articles which had been "added subsequently (to the marriage of the Nawab's daughter) were in excess. "The packet containing this list, the same witness previously stated, was given "by him to Ardaseer, the native agent, at the time of the sequestration of the "Nawab's property; and in reply to a question, 'When did you prepare that "'packet?' he replied, 'After the death of the Nawab Meer Surfuraz, Allee was "'inquiring for a list of the articles of the Jehez of Nujeeboolnissa Begum, and "'asked me where it was; upon which I said the Nawab had given it to me when "'he was alive, and that it was at my house; the Dewanjee afterwards came to "'my house for the paper, to whom I gave it; he then took it away, and the "'same day made a packet of it, which he returned to me.'" He afterwards repeats that the Nawab gave it to him to keep; on whose account he does not say. It is clear, however, from a further deposition made by him in another case at the time (Meer Akbur Allee's claim as creditor of the Nawab), that when the jewels were deposited in the rooms before mentioned, he found among the property belonging to Nujeeboolnissa Begum, a number of silver and gold coins, which were taken by the karbharee to the Nawab, who desired him to keep them together, with the list above mentioned, and use them if required for the expenditure of his house; and afterwards, it would appear, a part of the money was actually appropriated by the Nawab, and entered in his cash-book, and the remainder given to the said Mirza as a present on the Bismulla of his son. It is therefore quite clear it was the Nawab's intention to retain the money for his own use; and in making over the list to his karbharees, it is more than probable he intended to appropriate the jewels also. The only evidence to the contrary is the carkoon Madooram, who deposes to the fact that at the time the Nawab ordered the door of the room in which the jewels were deposited to be sealed, he added, "When Akbur Allee comes, we shall consign the property to him;" but I place no reliance on the testimony of this individual, who is in the service of Meer Jaffer Allee, and therefore entirely in the interests of his brother.

The object of Meer Akbur Allee producing the letter written to him by the Nawab, is to prove that his Excellency considered the property in question to belong to him, as he therein writes: "The mother of Burree Begum, the late,

"remains

" remains now-a-days very unwell on account of the eternal separation from " and natural grief for her daughter. Agreeably to the request of her mother, I " have sealed up all her effects, together with the goods of the jehez, and have " caused a separate memorandum to be written, according to custom, and have " placed them in your residence. Rest satisfied with what I have done, and " write to me always about your health and welfare." But there is nothing in this which can for a moment authorise the conclusion either that the Nawab regarded the property as belonging to Meer Akbur Allee, or that he intended thereby to make it over to him as a gift. By the Mahomedan law Akbur Allee had a right to half the property of his wife as one of her heirs; it was therefore quite natural for the Nawab, while writing to him on other business,* to say as much as he did, to show that he still had an interest in him, notwithstanding he had finally quitted Surat. It is clear also that Meer Akbur Allee, after his wife's death, came to Surat, and resided there for four or five months. Why did he not then make arrangements to take possession of the jewels, &c., if they had really been given to him, as he asserts, in the lifetime of his wife? The fact is, I do not believe they were ever bestowed upon him by her, and that his present claim is now only an attempt to get possession of them. I accordingly consider it is not established that the property in question was ever made over to him in gift by his deceased wife, and his claim to it on that ground is rejected.

It has now to be determined to whom do the jewels, &c. belong; to the estate of the Nawab, or to the heirs of Nujeeboolnissa Begum? The evidence of Mirza Mahomed Allee Beg would make it appear that it was the Nawab's intention, when he ordered them to be sealed up, to appropriate them to himself; and notwithstanding the letter from the Nawab to Meer Akbur Allee, which is the only evidence to be relied on, which he has adduced to show that the Nawab considered he had any interests in the property, I believe this was really the case, and that it was not his intention to make over any part of the property in question to his son-in-law; nor do I believe that the latter ever had any intention to claim any part of it for himself during the Nawab's lifetime. But that Meer Akbur Allee is entitled by law to a half of his deceased wife's property there can be no doubt; and, such being the case, the Nawab had no right to appropriate the whole. The share to which Meer Akbur Allee is entitled is accordingly awarded to him; at the same time, as the estate of Nujeeboolnissa Begum has a claim against Meer Akbur Allee for half of the dower which he engaged at the time of his marriage to pay to her, amounting to 1,00,000 rupees, my decision is, that the sum of 50,000 rupees, the share of the dower to which the Nawab was entitled as one of the heirs of his daughter, be deducted from the half-share of the property to which he is entitled in right of his wife, as one of her heirs, and that the remainder be paid to him; the other half, and the amount of the half share of the dower, to go to the Nawab's estate for the benefit of his heirs and creditors.

Meer Akbur Allee, in his letter to the agent for the Honourable the Governor, dated 27 June 1845, which is filed, contends he is not liable for payment of the dower, as it is not customary for families of rank to claim it, and it would have been disreputable in the Nawab to have done so; but as a wife's dower is strictly her personal property by law, and no evidence has been adduced in support of the custom he alleges, his plea on that ground is not held valid. He also called witnesses to prove that it was not customary in families of rank for the father to take back any part of the jehez given to a daughter on her marriage; but as a father by the law of inheritance is entitled to succeed to half his daughter's property, and the proof that has been adduced to the contrary is not to be relied on, his claim to the whole of his wife's jehez on these grounds cannot be admitted.

A Garden called Foolwarree.

This garden is claimed by Meer Akbur Allee on the grounds that it was granted to his wife as a gift by the late Nawab, and as she had made over the whole of her property to him during her life, that it, as well as every thing else which she possessed, now of right belongs to him. It has been decided, in the case of his claim to her jewels, that the validity of her gift is not established. His

* The real object of this letter was to beg of him to expedite a commission which he had promised to execute for him at Baroda.

3 May 1856.

His claim to this garden on that ground is therefore rejected. It is necessary, however, to decide to whom it belongs; whether it properly forms a part of the estate of the Nawab, or belongs to the heirs of his daughter, to whom, it is alleged, he gave it in his lifetime. In proof of the assertion that the Nawab made a gift of it to his daughter, a deed executed by him was presented by the petitioner, bearing date 3 June 1828, the authenticity of which is unquestionable; it is therein set forth that he separated the aforesaid garden from his possession and occupation, and gave it into the possession of the before-mentioned Begum, and further, that he, on the part of the Begum, (she being a minor), as her father and guardian, received and took possession of the same, and so forth. A gift from a father to his minor child is, according to the Mahomedan law, perfected by the mere declaration of it; there can, therefore, be no doubt in this instance of the validity of the gift, which is also established by a reference to the loose sheets of the Nawab's accounts, which are forthcoming, as mentioned in former cases, in which the following entry is found for the year when the deed was executed (Sumout 1885), viz.:—"Balance due on account of Foolwarree to "the end of Fussul 1884, now a gift to the Mehel, *Rs.* 165. 8." It also appears, from that year till 1890, the revenue of the current year was not again included till Sumout 1890, leaving us to infer that the gardens were managed separately on account of the young Begum. From 1891 the garden is again entered in the accounts of the Nawab's gardens as one of his own possessions, the revenue having been collected by his people and credited to him in his cash-account till the period of his death. At the same time, it appears that a certain sum was paid annually to the Burree Begum, as Nujeeboolnissa was familiarly called, till her death, which occurred in 1839, on account of this garden Foolwarree (*vide* Extract in the case of the Dubholle gardens claimed by Ameerulnissa Begum). The question, then, is, what did the Nawab intend by including the garden among his own possessions after a lapse of several years, and just at the time his daughter had arrived at the age of puberty, when her minority would cease, and she was about to be married to Meer Akbur Allee (this event happened in April 1834); did he intend to revoke his gift, and re-appropriate the gift to himself, or did he intend to manage it on her account? I think there is no doubt the former was his intention, and that the payment of the sums above alluded to must rather be viewed as compensation for the rents, than as the collections recovered on his daughter's account. If this were not so, it would have been proper that the whole sums realised should have been paid over to her, which was not done, as 1,515 rupees only appear by the accounts to have been given to her, whilst *Rs.* 2408. 8. were realised in the same period. Also, on the death of the Begum, the payments were no longer made to her heirs. But it is a principle of Mahomedan law, that a gift to a relation within the prohibited degrees cannot be resumed. The Nawab had, therefore, no right to take back the gift he had duly and formally made to his daughter when she was an infant. I, accordingly, decide that the garden in question properly belongs to the estate of Nujeeboolnissa Begum, and should be disposed of for the benefit of her heirs, in the same way as her jewels, &c. The evidence which has been adduced to prove that the Nawab, after the death of his daughter, recognised the right of Meer Akbur Allee to the rents of Foolwarree, by desiring them to be kept in deposit till the arrival of Burra Sahib, by which name he was known, is not borne out by the fact that they were not so kept, the amount having been regularly credited in the Nawab's cash-account, and actually used for his expenditure. Besides which, no reliance can be placed on the witnesses who depose to the statement, as they are creatures of Meer Jafur Allee, and ready to depose to anything in favour of his brother.

A. D. 1828–29.
A. D. 1827–28.
A. D. 1833–34.
A. D. 1834–35.

One-third of the Octyadra Village, of the Hashmut Bagh, and of the Duryo Mehel.

The claim which is here set up is in all respects similar to those which are advanced by Ameeroolnissa Begum and Jaffur Allee, on the part of his late wife Buktyaroolnissa Begum, to shares of the same village; my decision is therefore the same as in those cases, and the claim of the petitioner is rejected.

Ellahee

Ellahee Bagh, or Futch Ellahee.

This garden is claimed by Akbur Allee, on the grounds that it was given by the late Nawab to Nujeeboolnissa Begum, on her marriage, and as she bestowed the whole of her property on her husband during her lifetime, it by right belongs to him. It has been already decided that the validity of this alleged gift of her property is not established. The petitioner's claim on that ground is accordingly rejected; as regards the alleged gift of the garden in question by the Nawab to his daughter, no evidence is adduced in support of it. It further appears by the admission of the claimant himself, that it was never separated from the estate of the Nawab. An inspection of the Nawab's accounts shows also that the payment of the rents remained uninterruptedly with him from Sumt 1891, the year in which the alleged gift was made, till 1898, in the year in which the Nawab died, and that he enjoyed the entire produce during that period. It is quite clear, therefore, that the gift, if ever made, was not rendered perfect by the seisin of the donee; its validity consequently is not established. I decide accordingly, that the garden in question properly belongs to the estate of the Nawab. 3 May 1856.

A House called Cumnanee Durwajah, adjoining the Palace.

This house is built within the compound in which the Nawab's palace is situated, and which it immediately adjoins; in fact, it may be said to be a part of the palace having a separate entry. It is now claimed by Meer Akbur Allee, on the grounds that it was made over by the Nawab by a verbal gift to his daughter Nujeeboolnissa Begum shortly after her marriage, and that she continued to occupy it till her death, and as she had bestowed the whole of her property upon him in her lifetime, it now belongs to him. No evidence, however, is adduced to prove when and where the gift was made; and with the exception of the fact of her occupation of the building from the time of her marriage till her death, and of her husband having afterwards used the rooms when he came to Surat on two occasions to visit the Nawab, there is nothing to show that the Nawab ever regarded it as her property; that the Nawab assigned it to her and her husband as their residence after their marriage, while they formed part of his family, there is no doubt but, of itself, that can be no ground to establish a title to the proprietorship of house. The claim of the petitioner is accordingly rejected.

(signed) *R. K. Arbuthnot,*
Late agent for the Honourable the
Governor at Surat.

Baroda, 3 November 1845.

B.—No. 5.

Translation of a Petition from Badsha Begum, dated 27th, and presented to the Agent on the 28th February 1844.

After the death of my husband, the Nawab Meer Afzooloodeen Khan Sahib, several petitions in detail were submitted to the Government by the Honourable Company; whereas a notification is issued at presesent from the sirkar, to the effect that any person having a claim on the property of the Nawab should represent it within the period of two months, and after the expiration of this period it will not be admitted; consequently I again represent that I have a claim against my deceased husband, the late Nawab, for my personal property, being ornaments of precious stones, pearls, gold, and silver, 42 articles in number, to the value of about one lakh of rupees (100,000), and all these articles were my personal property, and all of them were in my possession. The nature of the claim is this: that some time ago I intended to proceed to Broach, when all these my jewels were entrusted to the charge of my mother-in-law, Zeeaoon Nessa Larlee Begum Sahib, and departed. After my departure, my husband, the late Nawab, took all these, my above-stated jewels, from his mother, and retained in his own possession; the proof of which is this, that when I returned from Broach, my mother-in-law, the said Zeeavon Nessa Larlee Begum, delivered to me a memorandum of all these jewels which were carried

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away by the Nawab Sahib, and the said memorandum is at present under the sequestration of Government, with my other property; but I submit with this petition another memorandum, which I caused to be written according to my recollection; and my jewels, which were deposited, were carried away by my husband from his mother, and retained in his own possession; the evidences to this effect are also ready. Your Honour will be convinced, from the evidence of witnesses and the memorandum of the jewels which is sequestration. I therefore hope your Honour will be pleased to inspect the memorandum, by taking it out from the sequestration, and after inquiring from witnesses, restore my jewels to me.

Petition of *Badsha Begum*,
Widow of the late Nawab Meer Ufzooloodden Khan.

Seal of
Badsha Begum.

Translation of a Letter from Badsha Begum to the Agent for the Honourable the Governor at Surat, dated the 19th March 1844.

At the time the Kulumbundie was withdrawn from my jewels, a memorandum of the jewels of my claims was delivered to your Honour was not the original, but a copy, which was delivered instead of the original, and, in consequence of my not having a knowledge to read and write, I said that it was an original. The circumstance of which is this, that the copy and the original were both in the box of my jewels, but at the time of making kulumbundee, the original was taken out to show it to the Native Agent, and after his inspection I was not aware that it was placed in another box; but I fancied that the original memorandum was in my box. Upon this supposition, instead of the original copy, was given to your Honour by mistake at the time it was asked for; and on a certain occasion I opened the box containing the jewels of the daughter of my brother, in which I found the original memorandum, which I submit herewith, as it was seen by the Native Agent at the time of kulumbundee; and I hope that your Honour will be pleased to retain this original in the sirkar, and the copy which had been retained in place of the original may be returned to me.

Seal of Badsha Begum,
Wife of the Nawab Qumrood
douleh Bahadoor.

Translation of the Memorandum forwarded by Badsha Begum to the Agent, with her Letter of the 19 March 1844.

Memorandum of jewels and precious gems, &c., of the deceased Salleh Chullebee, given to the Mehel of Burdaganee Allee, of Broach, in a Sawchuk, which were deposited with her Highness, the mother (Zeeaoolnessa Larlee Begum), for the purpose of holding in deposit, he carried away, which are as follows:—

Ornaments of Precious Gems.

One ticca of diamonds, with pearls of two strings of pearls.
One ticca of emeralds, with rubies.
One chand tiara of diamond, with pearls.
One surpech of diamond, with emeralds.
One pair of tool luwung, with pearls.
Two pairs of kurrun perool of diamonds, viz.:
One of pearls jounnka; one of emeralds.
One nose-ring of pearls.
One ballog of pearls.

One

One tavos or peacock of precious stones.
One kunty of precious stones, with pearls.
Pearls necklace of three strings, with emeralds.
One putreedar doogdoogee of rubies, with pearl drops.
One doogdoogee of diamonds and rubies, with emerald drops.
One jahangeery of precious stones, with gold chain.
One pair of diamond nowrutton.
Two gullebund of precious stones.
Two pair of pearl kunguns.
One gujed of pearls of 16 strings.
One dustbund of topaze.
Two diamond rings.
Tree bundlees.
One pair of chowdanee.
One pair of bhoojbund of precious stones.
One pair of jahangeeree putreedar.
One small surpech.
One augoostauch, with pearls.
One pair of unured for the foot.
One teekee.
One moorkee of pearls.
One pair of toomkha, with pearls.
One boozoobund, with pearls.
One bozoobund of cameleons.
Two rhoonty of kurrawah.

Ornaments of Gold.

One buddee of gold, in four strings, with precious teekas of gems, and with pearl drops.
One pair of gold paezel.
One pair of gold chain of seven strings.
One dustbund of soolamanee.
One silver soormadanee.

(signed) *Hizreeon.*

Dated 3d Rubee-ool-ranee, 1838.

Petition of Budsha Begum to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, A.C.

Previous to this, I, the humble and weak person, after the death of my husband, presented a petition, dated 27 February 1844 A.D., to the Sirkar, regarding the claim of the jewels, my sole property, within the period of the proclamation issued by Government. All present, it being indisputedly necessary for me to represent few legal proofs to the sirkar in support of the claim above alluded to, I beg to recite them here. That my claim is on my jewels in the estate of my husband, late Nawab, the value of which is about one lakh of rupees, and which (jewels) Nawab Meer Nussooroodeen Khan the late, *i. e.* my father-in-law, presented to me at the ceremony of my sachek or buree (the ceremony of sending henma to the bride on the day of marriage); these jewels were under my sole possession until the time I formed the intention of proceeding to Broach for the condolence on the death of my father. At this juncture all the aforesaid jewels I gave in charge of my brother-in-law, Meer Teyaoonisa, *alias* Lardey Begum Sahib, and went. After which my husband, the late Nawab, seized upon all the jewels of my mother-in-law, who was the mother of my husband, saying, when requested he would give them; when I returned from Braach I asked for my jewels several times, but my husband, instigated by some designed persons, gave promises, and put off the subject in subterfuge. I was helpless, and had no power to discuss the point, consequently the aforesaid jewels are my property, and the following are some proofs in support of my claim:

1. It is an evident proposition of the sacred law that what is sent by the husband to the wife at sachrek, it is her property, and it is laid down in the book May Moo Atool Oosool.

2. Since, according to the above proposition, of the law, the aforesaid jewels became my property, and my husband had seized upon them from his mother

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without my permission, such seizure of his is held invalid by the law, and such a usurper must be held responsible.

3. Most of the domestic people of my husband are acquainted with the matter that my husband took my jewels from his mother.

4. Since my father-in-law, Nawab Meer Nusseeroodeen Khan, gave me the jewels, which remained in my possession for some period; the law with regard to present and donation observes, that gift becomes the property of the donee and presentee by their possession of them, and afterwards, if the donor dies, his heirs can have no right of retraction to re-possess the donation.

5. The custom of the high class of the people prevails from ancient time, that a gift is never taken back from a wife, and custom and habit are to be relied upon according to the law as it is laid down in Rule 3 of the book Ushbah min nuzarjer.

I hope you will first separate the aforesaid jewels from the estate of my husband, and order them to be given to me, and after that cause my legal inheritance all to be given to ——

What more shall I write? May you always be happy.

Written on the 12th May 1845.

Petition of Badsha Begum, the widow of Nawab Meer Afzooloodeen Khan the late.

Her seal.

Badsha Begum,
the wife of Nawab Kumzoo Dowlah
Bahadoor.

(Free translations.)

(signed) *R. K. Arbuthnot,* late A. G.

Decision by the Agent for the Honourable the Governor on the Claims of Badsha Begum.

This applicant is one of the widows of the late Nawab. The jewels and property claimed she alleges was delivered by her about 20 years ago to Zeeaoohirsa Begum, the mother of the late Nawab, to be kept for her during her absence from Surat, by whom they were made over to the Nawab. They have never since been seen nor heard of, nor are they now forthcoming among the property which has been sequestered, nor can the applicant point out where they are. Under these circumstances, they cannot of course be restored to her. The seizure and detention of her ornaments by the Nawab was never brought to the notice of Government or any of the authorities in Surat in his lifetime; she has, therefore, now no claim to compensation on that account; besides, the Nawab had despotic authority over his own relatives and dependants, and his acts towards them, however unjust, it would now be improper to question. It may further be mentioned that the property claimed, and which is described by the petitioner as the dower, from Saleh Chelubbee, is particularly specified in a deed of settlement which was effected between the Nawab and his mother several years ago, before her death, which happened in 1827, as a part of the property which was then in her possession, and which it was agreed should be delivered over to him; consequently, the assertion of the petitioner that the Nawab obtained her jewels on the pretence that they were required for her to appear in on the occasion of the Bismullah of his daughter is false. I beg to observe this claim was brought forward in a petition to Government which was referred to the agent for his report on the 19th October 1844, No. 3259, and that the reply to that officer, and the Government decision thereupon, are respectively dated 3d January, No. 3, and 25th January 1845, No. 480.

(signed) *R. K. Arbuthnot,*
Late Agent for the Hon. the Governor at Surat.

Baroda, 3 November 1845.

B.—No. 6.

3 May 1856.

No. 8.

PETITION of Shahzadee Begum to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor.

A. C.,

THAT formerly after the demise of my uncle, I, the humble person have presented six petitions to the honourable Government, all of which have been sent with full explanations, copies of those petitions exist with your worship, whereas at present the proclamations had been received from the Sirkar (warning), that whosoever has a claim against the estate of the late Nawab, should within the period of two months produce it in the Sirkar, with proofs, and that such a claim would not be admitted if advanced after that period. I therefore had presented my petition with the claim on the 14th February 1844, and your worship returned that petition back with your endorsement on the back of it, requesting me to write and send in my claim separately with its proofs and value; I therefore am obliged to send three separate petitions containing three claims, one of these claims is the demand of my own jewels which amounts to the value of about 20,000 rupees, and of which jewels I had possession. It is about five years since my uncle has taken them forcibly and violently from me, and he pronounced these words, that he would give me all of my jewels at the time of my marriage; the number and the value of the jewels in question are as follows:—

	Rs.	*a.*	*p.*
1 Kunthee (or necklace) rupees	2,700	–	–
1 Kunthee	400	–	–
1 Diamond champakulee (or necklace with ruby)	2,000	–	–
1 Diamond ditto, small	2,500	–	–
1 Pearl doobra (necklace) of 7 threads	1,200	–	–
1 Ditto ditto	500	–	–
1 Large joognee (or necklace) with bejewelled plates and pearl	600	–	–
1 Small joognee with pearl	500	–	–
1 Doogdoogee (or necklace)	450	–	–
1 Teeka (or forehead ornament) with diamond pearl	1,200	–	–
1 Ditto, small, with diamond and ruby	500	–	–
1 Small chand tara (or ornament in the shape of moon and star)	300	–	–
1 Large ditto	900	–	–
1 Pair of bejewelled armlets	800	–	–
1 Pair of diamond krumphool (or ear ornaments)	550	–	–
1 Pair of pearl gujra (or bracelet)	250	–	–
1 Pair of kungun (or bracelet with diamond and ruby)	200	–	–
1 Pair of krinful	250	–	–
1 Pair of bracelets with diamonds and ruby	400	–	–
2 Pairs of leaved earrings	100	–	–
1 Pair of bejewelled bracelet	100	–	–
1 Pair of bejewelled inhaugeeree (or bracelet)	50	–	–
1 Pair of Bhoojbund, or armlet	300	–	–
1 Nose ring	400	–	–
1 Bejewelled thumb ring	50	–	–
9 Large and small rings	200	–	–
1 Pair of pearl durshunia	50	–	–
1 Pair of gold anklets, 80 tolas	1,280	–	–
Gold paizel (or anklet) about 25 tolas	400	–	–
Total *Rs.*	19,505	–	–

And the other four articles of jewels which were presented to me on the occasion of my betrothal, the value of the whole of them is 495 rupees; they are as follows:

	Rs.	*a.*	*p.*
1 Bejewelled chunnpakullee	240	–	–
1 Doogdoogee	135	–	–
1 Pair of bejewelled bhoojbund	60	–	–
Thumb ring with meeroot	60	–	–

and from these above-mentioned jewels two articles are in my possession, and all the rest of them are in possession of my uncle; to prove this matter, most of the domestic people of my uncle and his dependents are acquainted with the subject; also the jewellers who have weighed the jewels are aware of it, and likewise two articles, *i. e.* kunkree and teeka, out of them were mortgaged to certain person

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which have been taken by my uncle, and he hath passed his own receipt for them, a copy of which is submitted to your worship, in order that you will see it; and as a protector, first, you will order them to be restored to me. Beyond this, may the sum of your wealth be shining and glittering. 8 Sufur 1260. 27 February 1844.

Petition of Shah Judee Begum, the neice of Nawab Meeza Afzuloodeen Khan, the late, Her

SEAL.

PETITION of Meer Mooeenoodin Khan Bhahadoor to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor.

A. C.

Previous to this, after the demise of Nawab Meer Afzooloodeen Kahn Kunnoodowla Hushumtzung Bahadoor, the guarded in chastity and continence, M. Shapzadee Begum, the late, has presented a petition, dated 27 February 1844, on the subject of her claim within the period of the proclamation issued by Government, which petition is thus, the claim of me, the humble person, for the jewels, of my sole property, which amounts to the value of about 20,000 rupees, and those jewels were under my sole possession; it is about four and a half years since my uncle hath taken them from me forcibly and violently, at which time he pronounced these words, "that he would give me all my jewels at the time of "marriage," and in order to establish this subject I have three proofs.

1. Most of the domestic people of my uncle and the dependents of his Sirkar are acquainted with it.

2. The jewellers, &c., who weighed the jewels, are also acquainted with it.

3. That two articles from the jewels one kunthee and other one teeka were pledged with a person, my uncle having released them, has passed a receipt under his signature, copy of which has already been forwarded.

When the Begum died, according to the law, the jewels, her sole property, which have been seized upon by the Nawab, and the casket of the jewels which has been sent for and seized upon by the Surkar to the whole of them, by the law of inheritance the heir of the Begum is entitled, not the heir of the late Nawab, I therefore beg to solicit that I am the heir to the aforesaid Mr. Shahzadee Begum by two sides; the first is this, that I am one of the children of the uncle of the Begum's father's grandfather; for the father of my grandfather, named Meer Zujaoodeen *alias* Syed Mithin, and the father of the father of the grandfather of the Begum named Meer Mooeenoodeen *alias* Syed Achhun, were both real brothers, and to establish this relationship of mine there are several proofs besides this relationship the inheritance of Meer Mooeenoodeen, by another side, is legally established, that is my matrimony with the Begum hath taken place on the 16th of Rubeeoolawal 1260, and the causes of inheritance, according to the law, are four: 1st. Relationship; 2d., Mabismony; 3d., Ownership of a slave; and, 4th., Islam (or Mohamedanism) as it is well known to the law expounders. I am therefore in hopes that you will separate all the property and jewels granted to the Begum from the estate of the late Nawab, and order it to be given to me, that quantity of it which may be suggested by the law expounders in their answer of the sacred law.

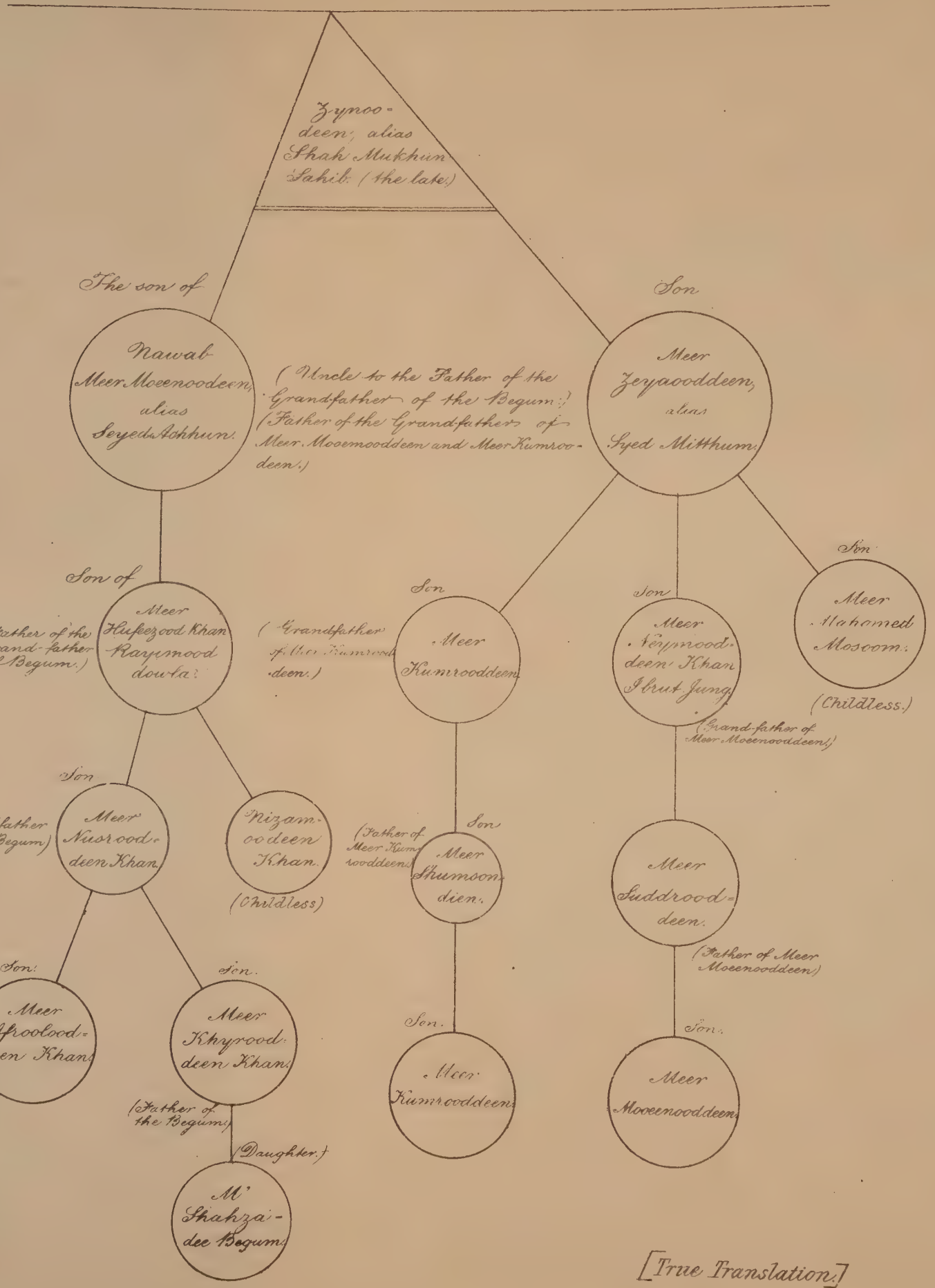
The following is the detail of the value of the articles of the jewels numbered. List of the value of the jewels, the sole property of Shahzadee Begum, the aforesaid:—

	Rs.	a.	p.
1 Knuthee, or necklace	2,700	–	–
1 Ditto	400	–	–
1 Clump a kullee, with ruby	2,000	–	–
1 Ditto, with one small diamond	2,000	–	–
1 Dolivia of pearls, seven strings	1,200	–	–
1 Ditto ditto ditto,	500	–	–

1 Large

(To face Page 91.)

GENEALOGICAL TREE.



[True Translation.]

(Signed) R. K. Arbuthnot,
Late A.G.

& Son, Lith.rs to The Queen.

No. 265.-(Part II.) Ordered by The House of Commons, to be Printed, 9th June, 1856.

Henry Hansard, Printer.

		Rs.	a.	p.
1	Large joognee, with bejewelled plates and one pearl	600	–	–
1	Small ditto, with one pearl	500	–	–
1	Doogdooghee	450	–	–
1	Large teeka (or head ornament), with pearl and diamonds	1,200	–	–
1	Small ditto, ditto, with diamond and ruby	500	–	–
1	Large chand tara	900	–	–
1	Small ditto	300	–	–
1	Pair of bejewelled armlets	800	–	–
1	Ditto of diamond kurrunphool (ear-rings)	550	–	–
1	Ditto, bejewelled, ditto	425	–	–
1	Ditto of gujra of pearls (bracelets)	250	–	–
1	Ditto of kungun, with diamond and ruby (bracelets)	200	–	–
1	Ditto of kurrunphool (ear-rings)	250	–	–
1	Ditto of puchoonchee, with diamond and ruby bracelets	400	–	–
1	Ditto of leave-shaped ear-rings	100	–	–
1	Ditto of pulroonchee bejewelled bracelets	100	–	–
1	Ditto of jehangeeree ditto (bangles)	50	–	–
1	Ditto of diamonds (armlets)	300	–	–
1	Nose ring	400	–	–
1	Thumb ring, bejewelled	500	–	–
9	Small and large rings	200	–	–
1	Pair of pearl dursunya	50	–	–
1	Ditto of golden anklets, weighing 80 tolas	1,280	–	–
1	Pazell ditto, ditto, weighing about 25 tolas	400	–	–

All the above amount, 19,505 rupees. The other articles of the jewels which were presented to me (the Begum) on the occasion of my betrothal are value of 495 rupees, as below detailed:

		Rs.	a.	p.
1	Clunnpakulle, bejewelled	240	–	–
1	Doogdoogy	135	–	–
1	Pair bejewelled bhoogbund	60	–	–
1	Thumb ring, with glass	60	–	–

Written on the 14th of May 1845, A.D.

Petition of Meer Mooeenoodeen Khan, the son of Meer Sudroodeen Khan Sufdwiping Bahadoor.

His Seal.

Meer
Mooeenoodeen
Khan
Bahadoor.

Decision by the Agent for the Honourable the Governor, on the preceding Claims of Shahzadee Begum.

This applicant is the daughter of Meer Khyroodeen Khan, the brother of the late Nawab, who died before his own father, Meer Nusseerooddeen Khan; on the death of her father, his daughter was taken charge of, being an infant, by her grandmother, Zeeaoolnessa Begum, the mother of Meer Khyrooddeen, who always regarded her as her own child. On the death of that lady, which happened, in 1827, the present applicant was 17 years of age. She was, some time afterwards, taken into the zenana of her uncle, the Nawab, where she resided till the death of his Excellency; and during that period, it is alleged, he took possession of her jewels. They are not now among the sequestrated property, and cannot, therefore be restored to her; nor do I think she is entitled to the compensation she claims on account of them, as their alleged seizure was never brought to the notice of any of the Government authorities in Surat at the time. Moreover, there is reason to believe, from a memorandum which has been given in by Meer Jafur Allee, as well as from the evidence of witnesses who have been examined on the subject, that, previous to the Nawab's death, the Begum was in the habit of lending and mortgaging her jewels, through the agency of a eunuch on the Nawab's establishment. It is, therefore, impossible to say how far the story of their seizure by the Nawab is correct; certainly no proof has been adduced to show that this was the case; on the contrary, it is evident on two

3 May 1856.

occasions that he recovered them for her from the parties to whom they had been lent or mortgaged, and restored them to her. At the same time it is certain, on the sequestration of the Nawab's property, she only gave over a few ornaments that were on her person to the native agent who was employed on this duty, saying the remainder were at the Nawab's, without, however, stating that he had seized them, or that they were kept from her, which, had this been the case, it is likely she would have done when called upon to deliver them up to Government; there is no doubt, too, that she was entirely in the hands of an eunuch of the name of Seedee Roomee, a designing character, who was likely enough to have made her conceal her jewels when the sequestration was going on, and afterwards instigate her to represent they had been taken away from her by the Nawab. I think this solution of the case is more likely than that the Nawab either took possession of her jewels by force, or that they were afterwards fraudulently made away with at the time of his death. I may remark that the authority of the Nawab over his relations and dependants was unbounded, so that even if he had taken his niece's jewels, his power to do so was unquestionable, and she had no remedy but to abide the loss. If they were now forthcoming among his effects, it would of course have been proper to restore them to their rightful owner. But as this is not the case, her claim must necessarily be disallowed.

As the jewels in question are nowhere to be found, it is unnecessary to enter at length upon the claims to them which have been advanced by the Bukshee as the heir of Shahzadee Begum, with that lady? His claim to these jewels is therefore likewise negatived.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

B.—No. 7.

No. 9.

TRANSLATION of the Petition presented by Shahyadee Begum to the Agent for the Honourable the Governor, dated the 27th of February.

PREVIOUS to this, and after the death of my paternal uncle (the Nawab) sir, petitions were submitted to Government, and I have detailed all the circumstances in all of them, copies of which are in your office; whereas a notification is issued by Government, to the effect that any person having a claim on the property of the deceased Nawab should, within the period of two months, represent it with proofs, after this period no claim will be admitted, I therefore again beg to represent my claims.

	Rs.	*a.*	*p.*
Gold venetians	5,500	–	–
Gold	7,000	–	–
Rupees	4,03,669	–	–

and further, the value of the different properties as follows:—

Mooglaee of the village of Koombaria	*29	–	–
Aud Murad	7,634	–	–
Mooglaee of half of the village of Bumrole	2,637	–	–
Wujeefa in the village of Bumrole	479	–	–
Garden of Nakhodan in the village of Mer	13,500	–	–
Fool Bagh in the village of Kutargann	3,800	–	–
Mooglaee of the village of Dukhunnara	4,000	–	–
Mooglaee of the vilage of Goradra	4,000	–	–
Garden in the village of Omermara	5,637	–	8
Muzefa in the village of Toonkee	1,800	–	–
Noor Bagh in the village of Anjua	3,505	–	–
Illahee Bagh	*25	–	–
Land in the Kaadnee Bagh, containing seven peices all measured and cultivated, of different pieces situated at the village of Anjou	20,133	–	–
Dwrya Mehel of Chubbee	16,000	–	–

* There is a mistake in this amount.

* There is mistake in this amount.

All these properties were purchased by my paternal grandmothers Zeeaooningsa Larlee

Larlee Begum, who has made a gift of them to me, and other properties are as follows:— 3 May 1856.

	Rs.	a.	p.
A garden called Faiz Elahi, a house of residence - - -	50,000	-	-
Mahomudee Bagh with three houses and rooms - - -	16,300	-	-
One piece of land situated in Kadneeleagh, in the village of Anjua, the price of which is mentioned amongst the seven pieces of land - - - - - - - - - -	—		
A garden at Bhuttaee in the village of Kutargaum - -	2,200	-	-
Garden at the village of Omermara - - - - - -	5,000	-	-
Bagh Hemudee - - - - - - - - - - -	5,632	8	-

My grandfather, the Nawáb, Meer Nusseeroodeen Khan, deceased, had made a gift of these six gardens to my grandmother, Yeeaoobussa Larlee Begum, and my grandmother made gift of them to me, as well as the silver plates, pieces of kim khab, broad cloth, and the silver plates of her own household, and pieces of Bangallee and Europ clothes, shawls, &c., the prices of which are 4,818 rupees, being eight part of her own, were also given me in gift, other jewels of precious stones, and pearls, gold, and silver, to the value of about two lacs of rupees (2,00,000), and also household furniture, wearing apparels, shawls, dooputas, woolen carpets, cotton carpets, quilts, copper and brass utensils, and china ware, and wooden articles, and trunks, cupboards, shelves, couches, chairs, &c., whatever, that were in the name of my grandmother, and were in her possession, as well as in her use; all these properties were given to me in gift on the 17th Rubeeool-sauce of the year 1238 Hijree (or January 1823) and according to the Mahomedan law every one of those gardens, mooglaes, &c. that have been written above are my property, and my uncle had forcibly possessed of them from despotic power, and it is evident in the Mahomedan law that any person forcibly taken possession of the property of other persons, he cannot be considered as the legal owner of it; moreover it is incumbent on him to cancell the property (it means to release the property from his possession), and that these properties are mine, in evidence thereof there is a deed of gift which was executed by my grandmother for all the property, with the seal of Mooftee Mahomed Shaik Jumaloodeen, and also it is the agreement of my deceased uncle, viz., "That jewels and effects, and wearing "apparels, being the personal property of mother, and the bands which may be "in the name of the mother, and the effects of the mothers jehey, which may be "in her sole possession, she may take them, and the mother had absolute power "over the property of her own; she may sell or give them to any one as she "pleases." And this agreement was attested with the seal of my uncle, on this ground these effects, as well as her allowance, were given to me in gift by my grandmother, and that her own allowance was 1,250 rupees per month (assigned) on the condition that it should be defrayed for maintenance of dependents, &c.; therefore the copy of the deed of gift, with the list of whole of the effects, are submitted to your Honour, and the deed of gift is copied according to the original, which I hope you will, on carefully inspecting, cause (the injured person) me to be redressed. The jewels are worth two lacs of rupees, (2,00,000), how can I furnish a particular list of them, and their number and weights, as I had not attained to full age when the gift was made to me, consequently my grandmother had retained all the articles in her possession during her life; and after the death of my grandmother my uncle forcibly took the whole jewels, together with the list, into his possession; a grain from these jewels, as well as from the income of the property, were not given to me, but moreover some of them were ruined (Pour had Shakhteh), and he called me forcibly from the house of my grandmother and caused me to live in his own palace, and told me in the deceitful manner "that all "your jewels and properties will be given to you at the time of your marriage." And I had no such power to oppose to his order because I was subjected and he was victorious in every respect, even he forcibly took from me my own private jewels, which were in my possession, therefore I made separate petition for those jewels, and I hope you will be pleased to order to restore to me all the property, jewels, ready cash, presented to me as above stated.

Seal of this Begum.

A Petition of Shahyadee Begum, the daughter of the brother of the late Newab Meer Ufzooloodeen Khan.

3 May 1856.

TRANSLATION of a Petition from Meer Mooeenadeen Khan Bukshy, dated the 16th, and received by the Agent for the Honourable the Governor on the 18th April 1844.

PREVIOUS to this I presented a petition on the 10th March 1844, that I was going to marry with Shahzadee Begum, daughter of Meer Khyroodeen Khan, my cousin, and son of the Nawab Meer Nusseeroodeen Khan, in consequence of my uncle, Nawab Nusseroodeen Khan, having admitted me as his son; consequently I married her, according to the Mahomedan law, on the night of the 16th of that month, in the presence of Tagee Golamali Sahi and some respectable people of the city, by the joy of which we felt much pleased. During the night the Begum was somewhat unwell; so passed a day and night; and on the night of 17th, by the will of God, her throat became dry in such a manner at three of A. M., that no medicine had any effect, and at half-past four she departed this life. She had no other heirs left after her except myself and Kumroodeen Khan.

Shumsoodeen Khan.—The manner of Meer Kumroodeen's inheritance is this; he is the cousin of Shahzadee Begum, and, by virtue of usoobut, is her heir; and my heritage is in two ways. First, I am in usahiz furi (a legal heir) and the heir of half her property, because I am her husband; and, according to Mahomedan law, the husband is entitled to half of the property of his wife, which is not unknown to the Mahomedan law expounders. Secondly, I am also cousin of Shahyadee Begum, and therefore the other half of the property should be divided between us. Shahyadee Begum has presented a petition regarding her claim to the property that was given to her in gift; viz., mooglaees muzeefas, gardens, jewels of precious stones, &c., worth about *Rs.* 4,23,669;* and Shahyadee Begum has submitted to the Sirkar the nature of each property, and, according to the Mahomedan law, the whole of these properties belongs to us as heirs, and in her claims we are both the successors of the said Begum, my relation. Meer Ufzooloodeen Khan Kumrood Dowlah Husbunit Jung had forcibly, compulsively, and violently seized her jewels, also are the property of mine and Meer Kumroodeen. In proof that the jewels and other property were bestowed in gift, a copy of the deed and gift, with the list of the property bestowed, &c., and a copy of the receipt from Nawab Ufzoolooden Khan, were submitted to your Honour by Shahyadee Begum. The originals of the deed of gift, &c., are ready with me, which will be presented at the time of the investigation.

Some of the Nawab's people are aware that the ornaments which the late Nawab took from the Begum, and as well as the box which contained those ornaments, was in the possession of my relative up to the time of his death. Therefore it is necessary for the Government to inquire about this box of ornaments, and deliver it to the legal heirs. Be good enough, also, to return the box lately taken possession of by your Honour, after the death of my niece and wife, by sending it through Seedee Roomee; because the property belongs to us both, and no one else can claim to it, agreeably to the Mahomedan law; nor has the Government any right to sequestrate the property of the deceased while the deceased's heirs and guardians are present. If any person unlawfully bring forward any claim, we are sufficient to answer the same. What is necessary at present to represent we have done; we shall make representation for other claims hereafter.

PETITION of Meeo Mooeenordeen Khan Bahadoor to Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, dated 14 May 1845.

A. C.

PREVIOUS to this after the demise of Nawab Meer Afzooloodeen Khan Kumroo Dowlah Hushmut Jung Bahadoor, the guarded in chastity and continence Mt. Shahyadee Begum, the late, has presented a petition, dated 27th February 1844, on the subject of her claim within the period of the proclamation issued by Government, which petition is this: "That I, the humble person, have my claim "in the estate of my uncle, the late Nawab, for the amount of 5,500 pattees "(venetians of gold), and 7,669 rupees, the price of the Mooglace's gardens, and

" places,

* Shahyadee Begum claim ready cash 4,03,669 rupees, "whereas the petitioner shows the worth of all the property she claimed to be 4,23,664."

3 May 1856.

" places, and unyefas (land), and other jewels bejewelled, and of pearls of gold " and silver, worth of about two lacs of rupees, and the household effects, &c., " whatever they were, in the name of my grandmother, Yeeonessa Larlee Begum ; " and she had them in her possession, which she has granted and alienated to me " on the 17th of Rubeeoosanee 1238 ; consequently, according to the law, all the " gardens and mooglaces, &c., whatever is mentioned above, is my property ; and " my uncle forcibly took possession of them by the power of his chieftainship ; and " it is an evident proposition of the law that a person seizing upon another's pro- " perty without his (the owner's) permission, cannot become its proprietor. His " occupation of such property is forbidden and invalid, and it is incumbent on the " person seizing the property to restore it. To prove this, that the afore-mentioned " things are my property, is the deed of alienation of all things bearing the seals " of Mooftee Jumaloodeen, and of other great people such as Syed Atthee, Syed " Mahomed Edross, and Meer Sudnooden Khan, &c., executed by my grand- " mother, and given to me. I have already submitted the copy of that deed to " your Worship ; and another proof in favour of my claim is this, that at the time " of the gift and alienation I had not arrived at the age of maturity, and my " grandmother in consequence kept all the granted articles, with the bond of the " gardens, places, and lands, and all the jewels in her sole possession, according " to the proposition of the sacred law ; and from the time of my grandmother " expired, my uncle forcibly seized upon all the granted things, with the bonds of " the gardens, &c., and all the granted jewels ; and he having sent for me from " the place of my grandmother, caused me to live in his own palace, and put off " in subterfuges, saying, that he would give me my proportion at the time of my " marriage, to this degree, that in order to appease my heart he prepared the " effects of my dowry twice, but neither he gave me in marriage, nor did he give " me one grain of it ;" and according to the law all this property and jewels belong to the aforesaid Begum ; for it is an evident proposition of the sacred law, that if a father or mother, or he who he has the charge of bringing up a minor and family, makes a gift of anything to the minor, the minor immediately the grant is made becomes owner of the gift, whether the gift be in possession of the owner or the trustee, as it iswell known to the law expounders.

When the aforesaid Begum died, and all the property and jewels of the gift legally proved to be her property as above stated, such property cannot be according to the law all the property, and jewels of the Begum's own, and received by her in gift, are the inheritable property of the Begum's heir; I therefore beg to state that I am Shahyadee Begum's heir by two sides, the one by the relationship that I am one of the children of the uncle of the Begum's fathers and grandfather, for the father of my grandfather, named Meer Yaoodeen, *alias* Syed Mittun, and the father of the Begum named Meer Moveenoodeen, *alias* Syed Achur, were both real brothers, and to establish this relationship of mine there are several proofs.

The first is the genealogical table herewith enclosed to your worship.

Secondly, most of the great people of the city are acquainted with it.

Thirdly, the story of Mirate Ahmudee can establish my relationship with the Begum, as it is laid down in it, that Syed Mittun is the elder brother of Syed Achur, and it is quite evident that the son of Syed Achur was Nawab Meer Hufeeyoodeen, *alias* Kayumoodomla, and the son of Kayyoomodowla Nawab Meer Nusseeroodeen Khan Kootboodowla, and Nowab Meer Nusseeroodeen Khan had two sons, the one Meer Kyhroodeen, and the other Nawab Meer Afyooloodeen Khan the late, and the aforesaid Shahyadee Begum is the daughter of Khyroodeen Khan, the son of Nowah Nusseeroodeen Khan. This will be elucidated to your worship by the genealogical table herewith forwarded.

Then it is proved by the genealogical table, and the Slisk of Nurati, Ahmuddee, &c., that I am the son of the son of the son of the uncle of the father of the grandfather of the Begum, and such a person, according to the sacred law, is called assulea (residuary) and mahee (a guardian), consequently I am positively the Begum heir, being her assulea, because, according to the law, the heirs to a deceased are of three kinds, the first shares, second residuaries and the third both (at once) residuaries and sharers. Besides the relationship I am her legal heir by another side which legally precedes the former, that is my matermony,* third ownership of a slave, and four Islam (or Mahomedanism), as it is well known to the law expounders. I am therefore in hopes that you will separate all the property and jewels granted to the Begum from the estate of the late Nawab, and order

* This word, in the original orthography, is put to its meaning right, and not to matrimony.

3 May 1856.

order it to be given to me, that quantity of it which may be suggested by the law expounders in their answer of the sacred law.

The following is the detail of the value of the granted property from gardens, mooglaces, lands, and places:

	Rs.	a.	p.
Mooglace, of the village of Koomaria - - - - - -	29,000	–	–
Ditto - of Bamolee and Barode - - -	7,634	–	–
Ditto of the half of the village of ditto - - -	497	–	–
The garden of Makhooda, at the village of Ber - - -	13,500	–	–
Phoolhagh, at Kuttargaum - - - - - -	5,000	–	–
Mooglace, of the village of Dakamomara - - - -	4,000	–	–
Ditto - of Garadra - - - - -	4,000	–	–
Garden, in the village Umermara - - - - -	5,637	–	–
Weeyefa, at the village of Taankee - - - - -	1,083	–	–
Noorhagh, at the village of Angna - - - - -	3,500	–	–
Ilahee Bagh - - - - - - - - -	25,000	–	–
Durya Mahel, of Chilabee - - - - - - -	16,000	–	–
Seven Wayeefas, of the land of Kadree Bagh, at the village of Anjna, all limited and measured and separately valued	20,133	–	–
The garden Tyyi Mahee, of residence - - - - -	50,000	–	–
Mahamedeehagh, with the three places and rooms - -	16,300	–	–
Garden of Bhuttace, at the village of Kuttargam - - -	11,200	–	–
Ditto - at the village of Comurmara - - - -	5,000	–	–
Ahmudeehagh - - - - - - - - - -	5,635	–	–

Written on the 14th of the month of May 1845 A.D.
Petition of Meer Mooeenodeen Khan, the son of Meer Suddrodeen Khan.

To Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor, &c.

OBSERVATIONS on the Claim of Meer Moreenadeen Bukshee, in right of the late Shahyadee Begum, submitted to the Agent for the Honourable the Governor, &c. by Meer Jafur Alee Khan Sahib.

THE claim through the Shahyadee Begum being made to the estate of the late Yayoomissa Lardly Begum, the mother of the late Nawab, it is to be borne in mind that the late Nawab was both the legal and natural heir of Yayoomissa Begum, and that, therefore, he was entitled to the whole of the property on her death, unless it is clearly proved that he was deprived of it by proper means.

The settlement between the Nawab and his mother was signed 28th Rubeeoolawul 1238, in which it appears the Nawab agreed to give up certain property to her, and, amongst other things, she expressly relinquished in exchange for a dwelling-house the Mooglace Wuyeefa of Bamcolee and Warod, and the garden of Nakhodainver.

The Nawab did not at once perform this engagement; but, on the contrary, it clearly appears, from Yayassmissa Begum's own petitions to Government, that he took and kept possession of all the property. It appears that it was not until the year 1243 Hiejree, about a month before she died, that he began to appropriate any part of it to her; but it does not appear that the appropriation or settlement with her was finally completed at her decease. It is now said that Yayassnissa Begum, on the 17th of Rubbeeoonissa 1238, made a gift of all her property to Shahyadee Begum; but the deed of gift states expressly that the property had been given according to the list bearing her seal; unless then this list be produced, that is a list then in existence, the whole gift falls to the ground; but the list produced bears date 19th Rubeeoonissa 1238, two days afterwards, and its falsity is detected by this fact, that in it is included the mooglaees of Bamrole and of Wurad, and the garden of Natehodainver, that is property which the Begum had only a few days before expressly given up to the Nawab; but when it is well known that the Nawab Nusseeroodeen died in debt, it is absurd to suppose that there were in the treasury eight times 7,000 gold mohurs, and 5,500 gold venetians, for one-eighth only was the Begum's share; the very exactness of this sum is absurd; but the list seems to include all the deceased Nawab's landed property, of which only one-eighth of the income was to be paid to the Begum. The list is therefore evidently a fiction, made at a venture; it is impossible to say at what time the Begum's seal was impressed upon it, as it is unattested.

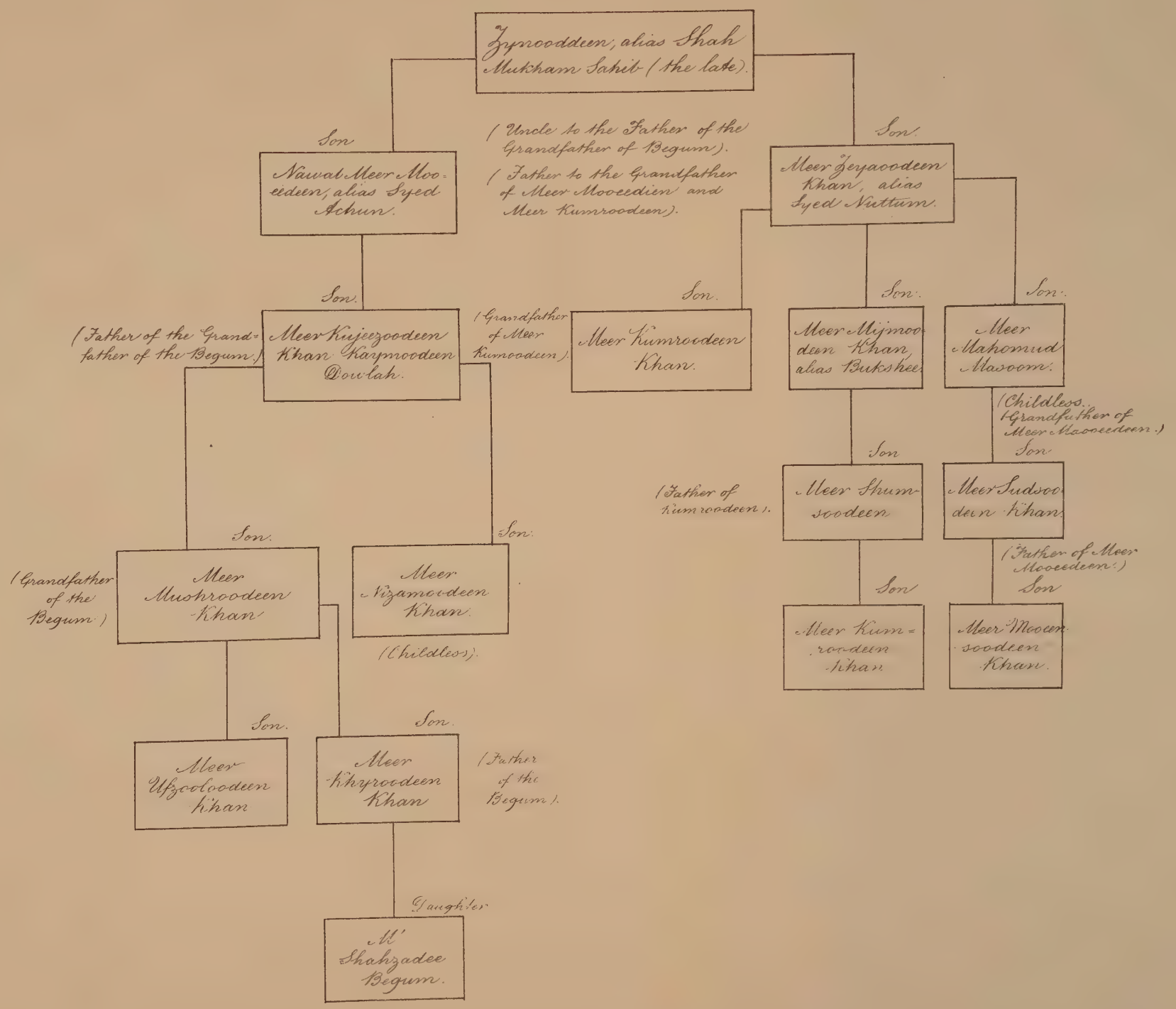
But

Sufdurjung Bahadoor (his Seal.)

Meer Mooeenodeen Khan Bahadoor.

(To face Page 96).

GENEALOGICAL TABLE.



(True Translation).

(Signed) R. K. Arbuthnot,
late A.G.

Day & Son, lith.rs to the Queen.

No. 265.-(Part II.) Ordered by The House of Commons, to be Printed, 9th June, 1856.

Henry Hansard, Printer.

3 May 1856.

But if the list were duly sealed no gift could be made of property which was not in Yayaronissa's possession or control to give, and Yayaoonessa Begum could never have considered she had made a gift of her property to Shahyadee Begum by the deed of gift, because for five years afterwards she made representations to the Agent of the Government claiming the property for herself, and in the end actually herself received from the Nawab whatever was delivered by him in fulfilment of his agreement, without any suggestion being made to him or to the Agent that she had given it all to Shahzadee Begum; if she had given it away, she had no right to receive it from the Nawab.

Some of the above objections having been pointed out by the Agent, an attempt has been made to overcome them, by setting up a second verbal gift by Yayaoonissa Begum, just before her death; but the only evidence of it is Seedee Roomee himself, who refused to answer any questions after delivering himself of a long set story. This alleged gift was never recognised by the Nawab, nor was the deed shown to him. The Sedee says the property was given to him as the guardian of Shanadee Begum; but as she was born in 1226, and this transaction is alleged to have taken place in 1243, the Shahyadee was 17 years old, and therefore could not have a guardian even if it were possible, without the Nawab's concurrence, that one of his slaves could be his niece's guardian. That no positive precise gift, in the last month of Yayaoonissa Begum's lifetime, was made, is beyond doubt, as neither time nor place is stated, nor are there any witnesses named, nor are any circumstances of the alleged gift mentioned; a bare assertion of Seedee Raamee (who had been disgraced by the Nawab, and was at enmity with the family, and induced Ahahyadee Begum to leave Nawab's mehel under his care), that everything was given to her is all that is put forward as proof of the gift.

As Seedee Roomee has actually produced the deed of gift and inventory of 1238, it is plain that if any further deed of gift or any new inventory or paper had been prepared to the same purpose shortly before Zayaoonissa's death, he would have kept it equally well with that produced.

The petition of Shahyadee Begum herself, dated 27th February 1844, drawn up with care and with an evident determination to make the most of her case, states, "my grandmother retained all the articles in her possession during her "life; not a grain from the jewels or income was given to me, nor is there a "suggestion in the petition of any other gift but that of the deed itself and the "list produced, from which it is manifest that the verbal gift and the transaction "in the last month of Yagaoonissa Begum's life is now set up by Seedee Roomee "in consequence of the deed of gift having been questioned by the Agent, and "is altogether a fabrication."

On the death of Zayaoonissa Begum the property with her was ostensibly her own, and the Nawab immediately took possession of it as her only heir. It is possible that the Nawab made some consoling remarks to the Shahyadee Begum after Yeeassonissa's death, such as he would spend a lac of rupees on her marriage, and give her jewels, &c., and there is no doubt that he actually gave her the jewels for her marriage, but that they have been since made away with, either by herself or by Seedee Roomee.

Any claim of the Bukshee to the fulfilment of this promise founded on his marriage is not deserving of notice, because he married the Shahyadee Begum (if it were a legal marriage, with her full concurrence), after the Nawab's death, when she was on the point of death, and a few hours before she died. He appears to have married for the express purpose of keeping up a claim lately put forward by his instigation, but which had not been made during 15 years of the Nawab's lifetime.

Surat Palace of the Nawab,
2 July 1845.

(signed) *Jafur Allee.*

(True copy.)
(signed) *R. K. Arbuthnot,* late A. G.

DECISION by the Agent for the Honourable the Governor on the preceding Claims.

THE property here specified has been claimed by Shabyadee Begum on the grounds that the whole of it was given her in the lifetime of her grandmother,

3 May 1856.

Yeeaoolnissa Larlee Begum, who she further asserts executed a deed of gift in her favour, dated cy" Ruheeoosanee A. H. 1238 (1st January 1823), which is produced. This document sets forth, as it is ordained when a person is on the point of death, if he have any goods, "that he should bequeath a legacy to his "parents and kindred according to what is reasonable." The Begum, therefore, declares she has bequeathed, conferred, and alienated the whole and entire of her real and personal property belonging to her in her own right, partly received in donation, partly purchased, and partly the one-eighth share of the property of her late husband, invested by her to Mt. Shahyadee Begum, the daughter of her deceased son Meer Khyroodeen, who, in consequence of the death of her father, is excluded from her paternal inheritance, and which property, according to a separate list bearing her own seal, she of her own free will and accord had rendered the private property of the aforesaid Shahzadee Begum, and that nobody has or shall have right to object to or to alter this. The deed then goes on to state, "that during the lifetime of the Nawab (Meer Messeer-"oodeen Kan) a marriage had been agreed upon between Meer Meeoodeen "Khan the son of her brother Meer Sudroondem Khan, and the aforesaid Shah-"yadee Begum, which had not been carried into effect in consequence of the "death of the Nawab." She then adds, "the completion of this affair has accord-"ingly become binding and incumbent on myself, or should I, by the will of God, "be made to accomplish it, then my aforesaid son, Meer Ufyooloodeen Kan, is to "conclude the marriage of the daughter of the late Meer Klyroodeen Kan "according to the orders of the late Nawab and my testament." From these quotations the document in question would appear to be rather of a testamentary character or nature, than a deed of gift. But as the petitioners claim under it on the latter ground, its validity as such has to be examined. Immediately after the death of the Nawab Meer Nusseeroodeen Khan, which happened in the latter end of A. D. 1821, his widow and his son, the late Nawab, commenced a violent dispute regarding the share of his inheritance to which she was entitled, which was not finally settled till December 1822, when they mutually signed a deed of agreement to each other, in which the conditions of the settlement is specifically stated, as follows:

The Begum was to retain the jewels, clothes, effects and assets which belonged to her, and the bonds for which had been drawn, and in her own name, together with the articles of her jehey or marriage portion, which she had in her own possession, or which were in that of her son. She was also to receive 1-8th of the whole of her deceased husband's property, with the exception of the arms, namely, jewels, dresses, &c. &c. belonging to the state, while on her part she was to make over to the Nawab the effects, dresses, jewels, &c. of the jehey received from Saleh Chehulebee (whose daughter the Nawab had married, and which belonged to him).

2. The Nawab was to pay her the sum of *Rs.* 1,250 per mensem for the maintenance of herself and defendants out of the allowance of *Rs.* 8,000, which he received monthly from Government.

3. The Begum was to make over to the Nawab 7-8ths of his ancestral property, and of that which belonged to Nawab Qootbootal Dowlah (Myamoodeen Khan), which was in her possession; the remainder she was to keep for herself.

4. She was to have power to dispose of her own property as she pleased.

5. Her brother, Meer Suddroodeen, the Bukshee, and his children, &c., were to be permitted to revisit him.

6. She might have free intercourse with her relations.

7. She might entertain an establishment, the nature of which is described.

8. Her servants, revenue, farriers, ryots, &c., were to be registered as the servants of the Nawab, that they might not be amenable to the jurisdiction of the Adawlut.

9. As the 1-8th share of the palace of the Nawab was insufficient for her residence, she was to have the 7-8th share of another dwelling-house belonging to him, in lieu whereof she was to make over to him a place from among the places which she had purchased for *Rs.* 30,000, viz., the garden of Veer of Nakada, the village of Barode; the moglaee and wuyeefa of the village of Bararole.

10. The Nawab was to pay her annually, by two instalments, after adjusting the accounts, 1-8th of the revenue of his landed property.

11. The whole of the property, jewels, dresses, &c. which were in her possession,

possession, were to be placed under the lock of both parties until a division should be made in every place. 3 May 1856.

12. The 1-8th of the property was assigned to her by the Nawab merely for her satisfaction and pleasure, as no division had ever taken place during five generations, that henceforth, if any of her relations claim a share in the estate, his claim shall be null and not recognizable, since it was only after her brother, Meer Suddroodeen, had given his consent to these terms that the Nawab agreed to a division of the property in her case. It is further stated that her brother has not, and shall not have any claim upon her son for a share in the estate of a dead or a living person.

13. The Begum was to make over to her son all the state documents, treaties, heritable letters and bonds of the gardens, houses and wuyefas, as well as all the records of the past, &c. &c.

14. The agreement and the counterpart was to be placed in deposit with a sowker, from whom both parties should receive them when the stipulations they contain were fulfilled.

Such is the nature of this document, which is referred to in the petition of Shahyadee Begum, and on which so much stress has been laid by Meer Jafur Ali in his claim to succeed to the entire inheritance of the Nawab. Its validity can therefore hardly be disputed; whether it was ever carried into effect is another point which is not so clear. This, however, is certain, that no division of the property took place at the time, nor for some years afterwards, and then, if made at all, only in a very partial manner about a month previous to the death of the Begum, and without any specification of the property delivered over to her. It is now therefore impossible to say what portion of it she died possessed of, or to what portion of it Shahyadee Begum can lay claim under the deed of gift, supposing it to be valid. But this point is of less importance, as I consider the deed of gift, transferring the property alluded to in the deed of settlement, to Shahyadee Begum to be wholly invalid; for in the first place, it is quite certain when it was executed (which, by a comparison of dates, was only a short time after the settlement of the dispute between the Nawab and his mother, although it was not carried into effect till five years afterwards), the property assigned was not in the possession of the Begum, and consequently she had no power to make it over to her granddaughter, since it is a principle of Mahomedan law, that a gift cannot be made to depend on a contingency, it cannot even be referred to take effect at a future definite period. The deed was therefore, from the beginning, null and void. Supposing, however, it could be considered effective as regards any property which had been made over by the Nawab to his mother, previous to her death, or which she may have had in her possession at that time; even in such a case, the validity of the deed was not established, since it is not proved that the property in question was *bonâ fide* made over to her grandchild as required by the Mahomedan law, to render the gift complete; and who, it has been shown, before it came into the possession of her grandmother, had attained majority; on the contrary, it has been clearly established, that it never was in the possession of Shahyadee Begum. But the deed is likewise deficient as regards the specification of the property intended to be conveyed by it, as it expressly states that the donor had voluntarily surrendered the whole of her real and personal property to the Begum aforesaid, according to a separate list bearing her own seal. It was therefore essential to the validity of the deed, that this should be produced, *i. e.*, a list, bearing date either before or on the same day as the deed of gift, and properly attested by witnesses; but no such list is forthcoming, as the one produced, bears date ig Rubeeoosnee A. H. 1838, two days after the date on which the deed was sealed, and it is not attested by a single witness. It is therefore impossible to say when or by whom the impression of the seal upon it was made, nor is the list itself altogether free from suspicion, from the large amount of ready cash which it is therein asserted the Begum possessed in right of the 1-8th of her husband's property, not less than to 7,000 gold mohurs and 5,500 venetians, notwithstanding it is generally understood that he died in debt. The attempt to show that the Begum, just before her death, assigned over the whole of her property to Seedee Roomee as the guardian of her grandchild, and that it was actually in his possession and under his management for some time before it was seized by the Nawab, tends of itself to throw a doubt on the validity of the deed under which the claim is now made; but

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being in no way supported by proof, if we except his own evidence, and that if Seedee Junished, both of them enucks on the establishment of the late Nawab, entirely in the interests of Shahyadee Begum, and the Bukshee, and on whose veracity I place not the least confidence, is wholly undeserving of attention; under these circumstances I consider the validity of the gift to Shahyadee Begum has not been established, and her claim to the property of her grandmother is accordingly rejected.

Having decided upon the claim of Shahyadee Begum, founded on the deed of gift executed by her grandmother, I may observe that even had the validity of that document been unquestionable, as the Nawab possessed a despotic authority over his own relations and dependents, however oppressive his conduct might have been towards his niece, as she had allowed so many years to elapse since the transaction occurred, without bringing it to the notice of the British authorities, which she had it in her power to have done, had she felt herself unjustly dealt with, I do not think the British Government could now properly have interfered in her behalf. It is beyond dispute, that the Nawab was the lawful heir of his mother's property, and the postponement of her claim till after his death cannot but be regarded with suspicion which nothing but the strongest evidence in support of her right could overcome.

The right of Shahyadee Begum to her grandmother's property having been negatived, it is unnecessary to investigate the claim of the Bukshee and of Meer Kumroodeen Khan to inherit it, founded on their right as the heirs of Shahyadee Begum, in virtue of the marriage of the former and the relationship of both. The Bukshee's marriage it may be here stated, took place just as she was on the point of death, solely I imagine to admit of his claiming the property in question as her heir, in case her right to it should have been established.

Baroda,
3d November 1845.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable
the Governor at Surat.

B. No. 8.

TRANSLATION of a Petition presented from Segree Begum, widow of Khyroodeen Khan Sahib, the brother of the late Nawab, presented to the Agent for the Honourable the Governor at Surat, eg 14th February 1844.

No. 10.

I PRESENTED to your honour the circumstance of my case, and was ordered to make a petition regarding the property taken away by the late Nawab, as well as for the right of my inheritance according to the Mahomedan law. I have consequently to state as follows:

First. When the great Nawab, Meer Nusseeroodeen Khan, died, and a dispute took place between the late Nawab and his mother, the Nawab trust fully sent me to live in the Durbar, and took possession of all the jewels, clothes and household furniture, &c., as per accompanying list, belonging to me, which I beg may now be restored.

Respecting my right of inheritance, I beg to inform you that it has not been determined according to the Mahomedan law, when the muwassukee of each person's right will then be ascertained. I am a woman; I cannot make out the moonasukee; unless therefore the shares be determined, I can make no representation on the subject.

I hope, therefore, that taking the above circumstances into your consideration, the jewels, clothes and household furniture belonging to me, as specified in the accompanying list, will be restored to me.

LIST of JEWELS, GOLD, and studded with precious stones, &c.:

		Rs.	*a.*	*p.*
Ornaments studded with precious stones, *Rs.* 3,775:				
2 Teekas (or forehead ornaments)		450	–	–
1 Teeka, value	*Rs.* 150 – –			
1 Ditto	300 – –			
1 Turpach (or an ornament worn in the turband)		350	–	–
2 Kumphools (or a kind of ear-ring)		600	–	–
1 Ditto	*Rs.* 450 – –			
1 Ditto	650 – –			

	Rs. a. p.	Rs. a. p.
3 Large nose rings of pearls	550 – –	
1 Ditto – Rs. 300 – –		
1 Ditto – 150 – –		
1 Ditto – 100 – –		
3 Boolaks or small nose rings of pearls	325 – –	
1 Ditto – Rs. 150 – –		
1 Ditto – 100 – –		
1 Ditto – 75 – –		
1 Armlet of diamonds	500 – –	
1 Necklace of diamonds with rubies	700 – –	
2 Doogdoogees (or a kind of ornament worn on the neck)	200 – –	
1 Doogdooger – Rs. 125 – –		
1 Ditto – 75 – –		
1 Pair of bracelets	100 – –	
		3,775 – –
Golden Ornaments, Rs. 1,050:		
1 Pair of golden anklets with bells, weighing 30 tolas, at the rate of 15 rupees per tola	450 – –	
1 Pair of chains worn round the ankles, weighing 40 tolas, at the rate of 15 rupees per tola	600 – –	
		1,050 – –
Ornaments belonging to the Female Slaves, Rs. 435:		
1 Toolsee, or a kind of necklace composedof nine strings, weighing 6 tolas, at the rate of 15 rupees per tola	90 – –	
1 Champakullee (or a kind of necklace), weighing 4 tolas, at the rate of 15 rupees per tola	45 – –	
1 Buddee mala (worn crossways on the body), weighing 7 tolas, at the rate of 15 rupees per tola	105 – –	
1 Pair of kungun (or a kind of bracelet), weighing 4 tolas, at the rate of 15 rupees per tola	60 – –	
1 Pair of bracelets, female fashion, weighing 3 tolas, at the rate of 15 rupees per tola	45 – –	
3 Rings, weighing 2 tolas, at the rate of 15 rupees per tolah	30 – –	
		435 – –
Silver Materials, Rs. 2,027:		
2 Pairs of rose sprinkling bottles, with saucers, four in number, weighing 140 tolas, at the rate of a rupee per tolah	140 – –	
2 Pairs of flower-pots, with saucers, four in number, weighing 150 tolas, at the rate of 1 rupee per tolah	150 – –	
Otter bottles, with saucer and spoon, four in number, weighing 24 tolas, at the rate of 1 rupee per tola	24 – –	
2 Pair of betel leaf-holders, with covers and saucers, six in number, weighing 150 tolas	150 – –	
Holders to keep betel leaves, cloves, cardamons, four in number, 400 tolas	400 – –	
Saucers of betel leaf-holder, five silver boxes with the handle of betel nut cutter, weighing 45 tolas	45 – –	
4 Silver plates weighing 160 tolas, at the rate of 1 rupee per tola	160 – –	
1 Pair of basin and goblet, weighing 225 tolas, at the rate of 1 rupee a quarter per tola	225 – –	
2 washing flour bottles, weighing 20 tolas, at the rate of 1 rupee per tola	20 – –	
4 Covers of water-pots, weighing 100 tolas, at the rate of 1 rupee per tola	100 – –	
6 covers of small water-pots, 60 tolas, at the rate of 1 rupee per tola	60 – –	
1 Water drinking cup, with saucer covers, 30 tolas, at the rate of 1 rupee per tola	30 – –	
2 Water-spoons, 80 tolas, at the rate of 1 rupee per tola	80 – –	
Small goblet, with cover and saucer, 20 tolas, at the rate of 1 rupee per tola	20 – –	
Dressing-box, with its articles, weighing 121 tolas	121 – –	
Dressing-box, weighing	75 – –	
Small cup, with saucer, weighing	7 – –	
1 Box of tooth powder, weighing	5 – –	

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	Rs.	a.	p.	Rs.	a.	p.
1 Box to hold black tinge for the eyes, with needle, weighing 3 tolas	3	–	–			
1 Gum-holder, with saucer, weighing	7	–	–			
1 Case of merrer, weighing	15	–	–			
1 Box of bath powder, 5 tolas	5	–	–			
Saucer and cover of the tooth-powder box, 4 tolas	4	–	–			
1 Silver hooka, with chelum, &c., weighing 125 tolas	125	–	–			
Chafing-dish, with cover and saucer, 55 tolas, at 1 rupee per tola	55	–	–			
2 Pairs of double-branched candlesticks, weighing, with saucers, 90 tolas, at the rate of 1 rupee per tola	90	–	–			
1 Single-branched candlestick, 15 tolas, at the rate of 1 rupee per tola	15	–	–			
1 Pair of clogs, covered with silver, 12 tolas, at the rate of 1 rupee per tola	12	–	–			
2 Tongue-scrapers, 5 tolas, at the rate of 1 rupee per tola	5	–	–			
				2,027	–	–
Effects belonging to Rufeeoodeen the Boy, *Rs.* 3,835:						
Feathers beset with precious stones	250	–	–			
Surpeile (or an ornament worn in the turban and set with precious stones)	250	–	–			
1 Golden collar, 7 tolas, at the rate of 15 rupees per tola	105	–	–			
1 Ditto of precious stones	200	–	–			
1 Necklace of emeralds	1,500	–	–			
2 Pair of rings worn on the wrists and ankles, 4 in number, 14 tolas, at the rate of 15 rupees per tola	210	–	–			
1 Pair of bells, 2 in number, 12 tolas, at the rate of 15 rupees per tola	180	–	–			
2 Pair of golden chains, worn round the wrists and ankles, 4 in number, 25 tolas, at the rate of 5 rupees per tola	375	–	–			
1 Golden amulet necklace, 15 tolas, at the rate of 15 rupees per tola	225	–	–			
1 Silver amulet, tolas 15, at the rate of 1 rupee per tola	15	–	–			
Silver tois, horse, elephant, tiger and ox, &c., 525 tolas, at the rate of 1 rupee per tola	525	–	–			
				3,835	–	–
Brass Articles, *Rs.* 59. 11:						
4 Trays, 4 spit pots, 2 pairs of wash-hand basins and goblet, 4 covers of water-pots, 2 water-spoons, 2 double-branched candlesticks, with saucers, 1 single-branched candlestick, 3 stands for lamps, 2 oil bottles, and 1 vessel for holding oil, all these weighing 2¼ maunds and 5½ seers, at the rate of 25 rupees per maund	–	–	–	59	11	–
Copper Brass Articles, *Rs.* 93:						
1 Pair of wash-hand bason and goblet, weighing 2 seers, pots, 2½ seers; total, 4 in number, weighing 12¼ seers, at the rate of 12 annas per seer	–	–	–	93	–	–
Copper Articles, *Rs.* 340:						
4 Caldrons, 15 trays, 12 large cooking-pots, 7 small cooking-pots, 25 large plates, 30 small plates, 7 large covers, 15 small covers, 10 jars and 5 skinners, all these weighing 17 maunds, at the rate of rupees per maund	–	–	–	340	–	–
Dressing Clothes, *Rs.* 2,135:						
1 Brocaded gown	175	–	–			
1 Embroidered gown, each valued 100 rupees	200	–	–			
2 ditto tarkushee, each valued 125 rupees	250	–	–			
10 ditto of push, valued 60 rupees	600	–	–			
5 China gowns, each valued 40 rupees	200	–	–			
7 Gang ditto - ditto - 30 rupees	210	–	–			
10 Muslin gowns, with gold and silver lace, each valued 50 rupees	500	–	–			
				2,135	–	–

	Rs.	a.	p.	Rs.	a.	p.
Veils worn with Gowns, *Rs.* 1,650:						
1 Brocaded veil	110	–	–			
4 Wire drawn veils, each valued 60 rupees	240	–	–			
8 Brocaded - ditto, 50 rupees	400	–	–			
5 China - ditto, 40 rupees	200	–	–			
7 Gauze - ditto, 40 rupees	280	–	–			
12 Muslin - ditto, with materials, each valued 35 rupees	420	–	–			
				1,650	–	–
Trowsers for the Gown, Gross, *Rs.* 501:						
1 Pair of brocaded trowsers	40	–	–			
4 Kunkhah - ditto - each valued 20 rupees	80	–	–			
7 ditto - ditto - ditto 15 „	105	–	–			
13 ditto - ditto - ditto 12 „	156	–	–			
12 ditto - ditto - ditto 10 „	120	–	–			
				501	–	–
Bodices, *Rs.* 444:						
37 Bodices of brocate, &c., with their materials, each at 12 rupees	444	–	–			
				444	–	–
Brocaded Shoes, *Rs.* 41. 4.:						
7 Pairs of brocaded shoes, each	35	–	–			
5 Ditto of broadcloth ditto, 1¼ rupees	6	4	–			
				41	4	–
Seventeen Long Coats, *Rs.* 313. 8.:						
2 Long coats of golden needlework, each at 35 rupees	70	–	–			
5 Ditto - of striped silk, ditto, 12 rupees	60	–	–			
1 Ditto, brocaded	75	–	–			
3 Ditto of humroo, or flowersilk	50	–	–			
1 At rupees	20	–	–			
2 Long coats, each at 15 rupees	30	–	–			
3 Ditto - each at 12 rupees, of plain silk	36	–	–			
3 China ditto, each at 7½ rupees	22	8	–			
				313	8	–
Women's Dressing Frocks, *Rs.* 580:						
2 Wire-drawn frocks, each at 40 rupees	80	–	–			
2 Brocaded, ditto - ditto 35 „	70	–	–			
2 Needlework, ditto - ditto 30 „	60	–	–			
4 China - ditto - ditto 15 „	60	–	–			
6 Gauz - ditto - ditto 10 „	60	–	–			
10 Muslin - ditto, with their materials, each at 25 rupees	250	–				
				580	–	–
Trowsers worn with Frocks, *Rs.* 245:						
6 Pair of brocaded trowsers, at 15 rupees each	90	–	–			
10 Ditto - at 10 rupees each	100	–	–			
5 Ditto of mushroo, at 4 rupees each	20	–	–			
5 Ditto of humroo, at 7 rupees each	35	–	–			
				245	–	–
Bodices worn with Frocks, with their Ornaments, *Rs.* 152:						
11 Bodices, each at 7 rupees	77	–	–			
15 Ditto - ditto, 5 rupees	75	–	–			
				152	–	–
26 Head-dressing Kirchieves, with their Materials, *Rs.* 270:						
6 Kirchieves, brocaded, at 15 rupees each	90	–	–			
8 Ditto, embroidered, wth materials, each at 12 rupees	96	–	–			
12 Coloured Kerchieves, with lace, at 7 rupees each	84	–	–			
				270	–	–
5 Scarves, *Rs.* 185:						
1 Scarf of	75	–	–			
2 Scarves, each at 40 rupees	80	–	–			
2 Ditto, at 15 rupees each	30	–	–			
				185	–	–
8 Shawls and 2 ditto Kirchieves, *Rs.* 555:						
1 Pair of red shawls	150	–	–			
1 Ditto, purple ditto	125	–	–			
1 Single red ditto	75	–	–			

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	Rs. a. p.	Rs. a. p.
1 Single green ditto	60 – –	
1 Ditto yellow ditto	55 – –	
1 Ditto dark brown ditto	40 – –	
2 Shawl kerchieves, 1 black and 1 yellow, at 25 rupees each	50 – –	
		555 – –
Glass Ware, *Rs.* 400 :		
15 Lamps, 2 chandeliers with lamps, &c., 2 shades, 4 wall shades, 2 large shades, 15 tumblers, 10 cups with covers, 30 lanterns, altogether valued about		400 – –
Wooden Furniture, *Rs.* 497. 4 :		
1 Desk, with silver materials	22 – –	
1 Ditto, brass ditto	7 – –	
2 Tables	17 – –	
3 Couches, at 5 rupees each	15 – –	
15 Chairs, at 2¼ rupees each	33 12 –	
3 Chests, with silver materials, at 25 rupees each	75 – –	
1 Cradle, with its legs covered with silver, and tinged	45 – –	
4 Chains of ditto, weighing ¾ of a maund, at the rate of 12 annas per seer	22 8 –	
1 Black wood cupboard, with silver clamps, &c.	55 – –	
2 Cupboards, with brass materials, at 45 rupees each	90 – –	
2 Chests, each 2 guy in length, with brass materials, at 12 rupees each	24 – –	
2 Chests, each 2 guy in length, with brass materials, at 7 rupees each	14 – –	
1 Large chest for the carpets	20 – –	
1 Sitting-board Agar, tinged	12 – –	
The coverings of ditto	1 – –	
Mattress of mushroo or silk, 2 Kinshall pillows, 1 Persian carpet	45 – –	
		497 4 –
Articles of Bidr Manufacture, *Rs.* 140 :		
5 Waterdrinking-vessels, with saucers and covers, at 7 rupees each	35 – –	
4 Hooka bottoms, at 15 rupees each	60 – –	
Betel leaf-holder, with a box	15 – –	
2 Plates, at 15 rupees each	30 – –	
		140 – –
Bedsteads, *Rs.* 547 :		
1 Bedstead, with screen, azure tinged	25 – –	
1 Kunkhab mattress	55 – –	
A covering of kunkhab, with golden edges	45 – –	
1 Kunkhab curtain	250 – –	
4 Ditto pillows, each at 7 rupees	28 – –	
6 Silver pinnacles of the bedstead, weigning tolas 35 each, at 1 rupee	35 – –	
Seybend, or silver cords, weighing tolas 24, at 1 rupee per tola	24 – –	
1 Kunkhab quilt	75 – –	
1 Silver printed counterpane	10 – –	
		547 – –
Pesh Puling, or subordinate Bedstead, *Rs.* 252 :		
1 Enamelled bedstead	7 – –	
4 Legs bedstead, covered with silver, weighing 10 tolas, at the rate of 25 rupees per leg	100 – –	
1 Kunkhab mattress	45 – –	
1 Ditto gilt	50 – –	
4 Ditto pillows, each at 5 rupees	20 – –	
8 Seybund (or silver cords), weighing 24 tolas, at 1 rupee per tola	24 – –	
2 Counterpanes of chintz, at 3 rupees each	6 – –	
		252 – –
Broad Cloth Articles, *Rs.* 87 :		
3 Large soognees, or carpets, at 15 rupees each	45 – –	
3 Small ditto, at 7 rupees each	42 – –	
		87 – –
Articles of Chintz, *Rs.* 26 :		
1 Pair of large soognees, at 7 rupees each	14 – –	
4 Small soognees, at 3 rupees	12 – –	
		26 – –

	Rs.	a.	p.	Rs.	a.	p.
Mattress to be spread under the soognees - - -	60	–	–			
				60	–	–
Pillows, *Rs.* 260 :						
4 Velvet pillows, each at 15 rupees - - - -	60	–	–			
15 Khunkhab pillows, at 10 „ - - - -	40	–	–			
4 Broad cloth ditto, at 8 rupees - - - -	120	–	–			
20 Chintz - ditto, at 2 „ - - - - -	40	–	–			
				260	–	–
Linen to be spread over the Carpets, *Rs.* 25 :						
5 Ditto, each at 5 rupees - - - - - -	25	–	–			
				25	–	–
Four Carpets, *Rs.* 220 :						
1 Large carpet, 15 guy by 10 product, 150, at the rate of 8 annas per guy - - - - - -	75	–	–			
1 Ditto - - - - ditto - - - - ditto - -	75	–	–			
1 Pair of small carpet, both in length 20 guy by 7 product, 140 guy, at the rate of half rupee per guy	70	–	–			
				220	–	–
30 Tray-covers, *Rs.* 80 :						
10 Tray-covers of broad cloth, at 5 rupees each - -	50	–	–			
20 Ditto - of chintz, at 1½ rupees each - - -	30	–	–			
				80	–	–
Kusnees, or the outer coverings of the trays, *Rs.* 120 :						
10 Kusnees of broad cloth, at 7 rupees each - -	70	–	–			
20 Ditto of chintz, with lining, at 2½ rupees each -	50	–	–			
				120	–	–
Bustimees or clothes to cover the trays, *Rs.* 7. 8. :						
20 Bustimees, at 6 annas each - - - - -	7	8	–	7	8	–
Clocks, *Rs.* 275 :						
1 Large clock - - - - - - - - -	125	–	–			
1 Small watch - - - - - - - - -	100	–	–			
1 Ditto - - - - - - - - - -	50	–	–			
				275	–	–
Landed property, *Rs.* 3,200 :						
1 Garden, named Mudeena Bagh, situated out of the Uthway Gate; this garden was purchased by my husband, at the value of about - - - - -	2,000	–	–			
1 Garden, named Shahabagh, situated within the same gate; this garden was given by my father-in-law to my husband, value about - - - - -	1,200	–	–			
				3,200	–	–
TOTAL - - - *Rs.*				24,772	–	6

14 February 1844, A. D.

The seal of the Jagree Begum Hamdanya, the wife of Meer Kheroodeen, the son of Nawab Meer Nusroodeen Khan, 1529.

(True translations.)

(signed) *R. K. Arbuthnot,*
Late A. G.

DECISION by the Agent for the Honourable the Governor, on the Claim of Jegree Begum.

THIS applicant is the widow of Meer Khyroodeen Khan, the brother of the late Nawab. As her husband died prior to his father, Meer Nusseeroodeen, she is, by the Mahomedan law, cut off from any share of the paternal inheritance; she is not therefore entitled to any portion of the property of the late Nawab, nor could she claim it to be supported by her husband's family, as after his death she became again dependent upon her own relations; she was nevertheless maintained by them, and since the death of the late Nawab, Government has assigned her a pension of 100 rupees per mensem, for her support; she has therefore nothing to complain of in this respect. As regards her claim to the

3 May 1856.

jewels, and other property, which she alleges were unjustly taken from her by the late Nawab, as she has produced no proof in support of her assertion, and none of the property specified in her petition is forthcoming, with the exception of a share of a garden called Mudina Bagh, it is necessarily rejected. The share in the Mudina Bagh is claimed on the grounds that it was purchased by her husband, and that she has a right, as his widow, to one-fourth of whatever property he left; and without doubt this is true by the Mahomedan law; but as she made no claim to it at the time of her husband's death, or, as was most probably the case, she then either tacitly or avowedly acquiesced in the appropriation of the whole garden by her father-in-law, Meer Nusseeroodeen Khan, as the condition of being maintained by him, or it may be, she even received remuneration for her share of it, and as her husband Khyrodeen Khan has been dead about 35 years, it would now be unreasonable to re-open the case. Her claim is accordingly rejected.

Baroda,
3 November 1845.

(signed) *R. K. Arbuthnot*,
late Agent for the Honourable the Governor at Surat.

(B.) No. 9.

TRANSLATION of a Letter from Badshaw Begum to the Agent for the Honourable the Governor, dated the 20th February 1844.

No. 11.

THE woman Rungbahar, the mother of children by my husband the Nawab Meer Ufzoolooddeen Khan, has presented to me a petition regarding an arrangement to be made by the Sirkar for her food and clothes, together with a memorandum of her, which she desires to have restored to her, her jewels. The said petition, with the memorandum, is accordingly submitted to your Honour. The said woman was treated by the Nawab with much respect, and had passed her life in his house with reputation; therefore I hope, after examining the petition and memorandum, you will, by making favour her arrangement for her maintenance according to her respectability, and make over her jewels to her.

Dated 20 February 1844.

Seal of
Badshaw Begum.

TRANSLATION of a Petition presented by Rung Bahar to Badshaw Begum.

I, RUNGBAHUR, old and feeble in body, the mother of children by the deceased, Nawab Meer Ufzooloodden Khan, I beg to state, that bore him four children, and was supported by him and his father and mother, who supplied me with food and clothes, and since their death you have supported me; at present a notification is received from the Government of the Honourable Company. I have, therefore, thought it necessary to represent my case to you, that you should in my behalf address the sirkar for an arrangement for my support, according to the Nawab's respectability, because I have a right. I have expended the whole of my life in the name of the Nawab, in his house; you are his married wife, and my guardian; you are great in rank and high in character, and I have claims upon you; I therefore seize the skirts of your robe, as without your support I shall not be able to accomplish my object. It is incumbent upon you to cause an arrangement to be made, by representing it to the sirkar, agreeably to my request; you are well aware of the circumstances of my case, as well as Seedee Roomee, Seedee Steelal, Seedee Irmshed, &c., also some of the women who are alive. I have also another claim regarding my jewels and wearing apparels, the manner of which is this, that when your mother-in-law, Zeedoolnissa Larley Begum Sahib, took me from the charge of the Nawab at that time, I left jewels and wearing apparels with him, agreeably to a separate memorandum herewith forwarded, by causing the restoration of the jewels, &c. According to the memorandum, it will be creditable to you; I therefore hope you will be pleased to write all these circumstances to the Sirkar of the Honourable Company, and cause an arrangement for my food and

and clothing to be made, according to the respectability of the deceased, and also for the restoration of my jewels, that I may expend the remainder of my life with ease. 3 May 1856.

Dated 27th Mohrum 1260, Higree.

MEMORANDUM of the Jewels belonging to Rung Bahar, the Mother of the Children of Nawab Meer Ufzooloodden Khan Qunnoo Dowlet, Husband, Jung Bahadoor.

ORNAMENTS of PRECIOUS STONES:

1 Bolag.
3 Pairs of Bazoobund, as follows:
- 1 Pair of Bazoobund of red stones.
- 1 Pair of Bazoobund of green stones.
- 1 Pair of another Bazoobund.

3 Pairs of Kurumphool, as follows:
- 1 Pair of Kurumphool of white stone.
- 1 Pair of middling Kurumphool.
- 1 Pair of Kurumphool of red stone, of much value.

2 Pairs of ear shals, as follows:
- 1 Pair of diamond ear shals, of much value.
- 1 Pair of ear shals, of less value.

5 Rings of precious stones, as follows:
- 4 Rings of precious stones.
- 2 Rings of pearls.

1 Arish of pearls.
1 Gullabund of precious stones.
2 Kuntees, as follows:
- 1 Kuntee of much value.
- 1 Kuntee of less value.

1 Jognee putridar of precious stones, with pearls.
1 Jognee plain, with pearls.
1 Dowlance of pearls, with 6 strings.
1 Chur Malla of pearls of 7 strings.
1 Chimpa Kullee of precious stones, with pearls.
3 Doogdoogees of precious stones.
1 Pair of kungun of pearls.
1 Pair of jahangeery of precious stones.
1 Pair of dholno of pearls.
1 Pair of tikreedar guyra of precious stones, with pearls.

ORNAMENTS of GOLD.

1 Toolsee of 5 strings.
1 Chumpa kulle, with pearls.
1 Malla of 2 strings.
1 Chenhar of 7 strings.
1 Pair eyarch.
1 Pair of poonchee of 3 strings.
8 Rings.
1 Pair of paels.
1 Pair of louras.
1 Pair of khulkhals.

ORNAMENTS of SILVER.

1 Pair of paels.
1 Pair gongroder chains of 7 strings.
1 Pair gongrodar khulkhals.
1 Pair plain khulkhals.
1 Pair gitted barzobund.

WEARING APPAREL, such as Peshway Doputtas of Benares, and Embroidery Kurtunnees.

15 Pairs of peshway of embroidery, and chenass, &c.
10 Pairs of white peshway of other damur.
25 Kortunees of embroidery chenau, and ghause runger.
25 Petticoats of khunkhab humroo and encha, &c.
10 Square handkerchiefs to cover the body, embroidered, and in the shape of shawls, &c.
5 Handkerchiefs of embroidery for covering the breast.
1 Yellow shawl.
7 Benares daputta, coloured, &c., as follows:
- Doputtas of Benares.
- Doputtas of embroidery.
- Plain doputtas.

(True translation).

(signed) *R. K. Arbuthnot,*
late A. G.

DECISION by the Agent for the Honourable the Governor, on the preceding Claim of Rung Bahar.

THIS applicant is a female slave of the late Nawab, to whom she bore several children, all of whom died, and she was subsequently treated by him with neglect. The property she now claims is not among that which has been sequestrated; but even if this were the case, and it could be distinctly proved that the Nawab had seized it, as is alleged, he would still have had no right to have it restored to her, as by the Mahomedan law a master is the owner of any property a slave may possess, and he had therefore a full right to take it from

3 May 1856.

her if he pleased. She has had a sum of *Rs.* 40 per mensem assigned to her for her maintenance by Government; she has therefore no cause of complaint in this respect.

Baroda,
3 November 1845.

(signed) *R. K. Arbuthnot*,
late Agent for the Honourable the Governor at Surat.

(B.) No. 10.

TRANSLATION of a Petition of Mirza Easeen Beg, and other Heirs of Mirza Abdoola Beg, presented to the Agent for the Honourable the Governor, on the 27th February 1844.

No. 12.

THIS is our representation: Mirza Abdool Beg Ameer Bey was the manager of the Nawab of Surat, whose property, valued at lacs of rupees, consists of cash, jewels, household furniture, garden, wuzeefas, mooglae, &c., he sequestered, and himself placed in confinement. We are his children, widows and dependents, who, after having had our clothes searched, were made to sit in an open plain, after which Abdoola Bey cut his throat while in confinement, and died; we then having no place to live in, we were obliged to take up our abode in a mosque; and subsequently, as we were starving, we represented the circumstance of our case to the Nawab, who, taking our situation into his consideration, made us an allowance of *Rs.* 46 per month, and gave us an assurance that our property should be restored to us. The above-mentioned sum was paid to us regularly till the time of the Nawab's death, and after his demise it was continued to us by the Begum (his widow), and the Begum, his daughter, and Meer Jaffer Allee, his son-in-law; but about six months ago, when they received the answer from Government adverse to their claim to the allowance formerly enjoyed by the Nawab, some of his servants were discharged, and our allowance was at the same time discontinued, and since then we have been starving. The Jhageers of our father, Abdoola Beg, are now under sequestration by your Honour: we therefore pray you will cause them to be made over to us, together with his wuzeefa, property, ready cash, jewels, &c., so that we may be able to maintain ourselves, and pray for you; and until an arrangement of this kind can be made, we pray we may be permitted to receive the sum above-mentioned from the income of the Jhageers, &c., so that we may not starve.

(True translation.)

(signed) *R. K. Arbuthnot*,
late A. G.

DECISION by the Agent for the Honourable the Governor, on the Claim of Mirza Yaseen Begand and others.

THE applicants in this case are the heirs of Mirza Abdoola Beg, formerly the manager of his Excellency the late Nawab. The object of their petition is to have the property of their deceased relative, which they allege was unjustly seized by the Nawab, restored to them. Abdoola Beg had had the unlimited control of the Nawab's pecuniary affairs for many years. In A. D. 1835, he fell under the displeasure of his Excellency, when the key of the Treasury was taken from him, and he ceased to draw his pay, and no longer attended or performed service in the Nawab's household. Notwithstanding, the following year a claim was preferred against him on account of alleged malversation, which was submitted, with the consent of both parties, to arbitration. The arbitrators, however, died before any progress had been made in the inquiry, and the Nawab refused his consent to appoint another, as he asserted he possessed, by treaty, an uncontrolled power of dealing with his servants as he pleased, and this view of the case having been adopted by Government, he was, under their instructions, delivered over to the Nawab, by whom he was immediately placed under restraint, and the whole of his personal property sequestrated; the result of which was, that at the end of six months Abdoolah Beg committed suicide. The Nawab had previously, on the death of the arbitrator,

taken

taken possession of Abdoola Beg's landed property, houses, &c., a list of which was forwarded to Government by the latter, along with a petition, dated 7th February 1837, complaining of the Nawab's conduct towards him. The list of his personal property which was seized by the Nawab when he was made over to him, was subsequently obtained from his Excellency, on the application of the agent for the Governor at Surat, and forms an accompaniment, Nos. 41, 43, 45 to Mr. Elliot's Report to Government, dated 3d April 1839, which was called for after Abdoola Beg had destroyed himself; a small part of the property is only now under sequestration; part of it was given away to some of his dependents, part remained in his own possession, and part, as might be expected, was lost or destroyed. The question now is, to whom does this property rightfully belong, to the parties who have possession of it, or to the heirs of Abdoola Beg? The Nawab claimed, under the Treaty of 1800, to have full power to deal with his servants and relations, and with their property, as he chose; and this view of his right was upheld by Government. I am humbly of opinion, however, that he possessed no such power by the Treaty, although in practice he was permitted to act towards his relatives and dependents as he pleased, however flagrant his conduct might have been. But the undue exercise of a right not lawfully possessed, can never be said to justify an act of spoliation, and any property unjustly taken from individuals under such circumstances ought undoubtedly to be restored to them: in regard to Abdoolah Beg, this would appear more particularly necessary, as he had quitted the Nawab's service before the seizure of his property, and had declared himself to have become, as he originally was, a British subject; as such, too, he had appealed to Government against the Nawab's oppressive conduct; and there is no doubt the robbery of his personal estate by the Nawab, after he was delivered over to him, was the consequence of that act. At this distance of time complete justice cannot be done to his heirs; but the restitution of such of their relative's property as *bonâ fide* belonged to him, would appear to be imperatively called for. Accordingly, the lands and Mooglace Hucks now in sequestration, which are mentioned in the statement furnished to the agents for the Governor of Surat, as being given to Abdoolah Beg, should be separated from the Nawab's estate, and made over to them. Those which the Nawab alleged in the same statement were purchased by Abdoolah Beg with his Excellency's money, ought not be restored unless his relations can clearly and distinctly prove that they were purchased from his own means, in which case they may fairly claim to be put in possession of them. These lands, however, have, for the most part, been transferred to the followers and dependents of his late Excellency, in whose possession they now are. They will, therefore, only be recoverable from them by a civil power, to which the present applicants should be advised to resort, if fully satisfied of the validity of their title, as soon as it shall be determined before what tribunal actions of this nature shall lie. These lands, &c., were not included in the statement which accompanied Abdoolah Beg's petition to Government, dated 7th February 1837; consequently, a strong suspicion must always exist that they were not fairly obtained, and on that account I do not now propose the restoration of such of them as were found in the possession of his Excellency at the time of his death. In declaring my opinion that the Nawab had no right, under the Treaty, to deal with the persons and property of his servants and relations as he pleased, it may not be out of place here to refer to the dispatch of the Court of Directors, paras. 55 to 62, dated 21st April 1841, No. 10, while commenting on the proceedings of Government in Abdoolah Beg's case, as their view of it corresponds with that which I have taken.

3 May 1856.

Baroda, 3 November 1845.

(signed) *R. K. Arbuthnot*, late Agent Governor at Surat.

B. No. 11.

PETITION of Mirza Hamed Begbin Ameer Beg to the high in rank Sir *R. K. Arbuthnot*, Bart., Agent for the Honourable the Governor.

Sir,

MY petition is this, that in the year 1839, his Excellency the Nawab of Surat seized and imprisoned my brother, Mirza Aboola Beg, and his Excellency's karbharee,

No. 13.

3 May 1856.

karbharee, Mahomud Alee Beg, took away all my brother's wealth, property and household effects; along with that, hath taken away the goods and effects of my house also: at this time I was in Bombay. Sir, besides my household effects, he had taken away the bonds of the shop, purchased with my money, and of the places mortgaged to me, of the value of about *Rs.* 12,975. I heard this in Bombay, but I could not come from Bombay at present; I came in Surat about a year and a quarter ago, and his Excellency the Nawab having died, I could not apply to recover my purchased places, and the other property, &c., in my possession, as the Government issued now proclamations fixing the period of three months. I am obliged to make this application, and hope, having seen them, and investigated my occupation of them, you will order them to be delivered over to my possession; also, it is in your power to cause me to be paid the amount of the produce of these places, &c., which remain unpaid to me from the year 1839 up to the date; besides this, my household effects, worth of about *Rs.* 8,000, have been taken away from my house, which I write to be brought to your notice.

Detail of the Places.	*Rs.*	*a.*	*p.*
Twelve purchased shops, situated in the Nawpoora Bazaar, worth of about	7,000	–	–
Purchased yellow house in Moogleesurra, worth	800	–	–
Rooms situated near Durbar, taken in Mortgage, worth	350	–	–
Bond of pension of Kimrooddeen Bahadoor, and his house, taken in mortgage, worth of about	350	–	–
Rehmut Khan's house at Syndpoora Bhaghut, taken in mortgage, worth	350	–	–
Materials of the stables situate at Toonkee, worth	100	–	–
Purchased bare ground, situate at Mirza Shamee's Cheekla, worth	100	–	–
Purchased bare ground, situated at Kubeesha's Mohallah, worth	25	–	–
One garden, named Yalwodeeka Bagh, consisting of 14 beegas, which my Abdoola Beg had granted to me, worth	3,000	–	–
Rs.	12,975	–	–

(True translation.)

(signed) *Meerza Hamud Beg.*

(signed) *R. K. Arbuthnot.* late A. G.

Decision by the Agent for the Honourable the Governor, on the Claim of Mirza Hamed Beg.

Brother of Abdoola Beg: he had been in the service of the Nawab, but was not employed after 1835. At the time his brother was delivered up to the Nawab in November 1838, and his personal effects seized, the applicant's property was likewise taken possession of, and dealt with in the same manner, notwithstanding no allegation was made of malversation, nor any claims advanced against him of a pecuniary nature; under these circumstances, such portion of the applicant's property as may be made under sequestration should be restored to him, on the production of sufficient proofs that it was *bonâ fide* in his possession at the time of its seizure, and for the remainder, which may be in the hands of other parties, he should be instructed to bring an action against them for its recovery in the ordinary course of law, as soon as it shall be determined before what tribunal this will lie, since it is quite clear the Nawab had no power or authority to sequester his property, and, therefore, the title of any person holding of him* cannot be considered valid. A list of the property belonging to the petitioners was obtained from the Nawab, and forms an accompaniment, Nos. 42 and 44, to Mr. Elliot's Report to Government, dated 3d April 1839, which was called for subsequent to the death of Abdoda Beg.

s. o.

(signed) *R. K. Arbuthnott,*
late Agent for the Hon. the Governor of Surat.

Baroda,
3 November 1845.

B. No. 12.

3 May 1856.

TRANSLATION of a Petition from Mirza Mahomed Allee Beg to Bukhtyaroolnessa Begum, dated 10th March 1844.

No. 14.

THE most excellent the late Nawab made a gift to me of the Mooglace of the village of Kucholee, &c., and other property. The latter is in my possession and occupation, and the revenue of Mooglace of Kucholee was so likewise, so long as the Nawab lived, as you know. But after his death the Sircar's property was sequestrated by the Company's Government; the property, &c., which has been given to me, was then also sequestrated: I thereupon produced copies of the Sunuds, bearing the Cazee's seal, to the agent for the Honourable the Governor, who, after perusing therein, restored to me all the property, with the exception of the Mooglace of Kutcholee, which has not been restored; consequently I petitioned him on this subject; but an order was issued that the Mooglace of the said village should remain under the charge of the Mamlutdar of Chowriassee Purgunna, and after investigation it would be paid to me. I therefore hope you will be pleased to write to the agent Sahib that the Mooglace of Kuchollee is included in the deed of gift, and that I received the amount while the Nawab lived. The Mamlutdar of Chowrassee Pergunnah should therefore be directed to pay me the accumulated arrears, and not to prevent me collecting the amount of my dues in future.

(signed) *Meerza Mahomed. Ally Beg.*

(Seal.)

(True translation.)

(signed) *R. K. Arbuthnot,*
late Agent to the Governor.

DECISION by the Agent for the Honourable the Governor on claim of Mirza Mahomed Allee Beg.

THIS applicant succeeded Abdoolla Beg in the entire management of the Nawab's affairs after the removal from office of that individual. He is not particularly well qualified for the situation, as he does not read or write; but he appears to have had great influence with the Nawab, and is supposed, in the few years during which he had charge of his affairs, to have accumulated a considerable fortune; he holds a deed of gift from the Nawab, dated 25th January 1841, making over to him several gardens, wuzeefas and houses, as well as the Mooglace Hucks, in the village of Kucholee, formerly the property of Abdoollah Beg, which are the subject of his present application. There is no reason to doubt the validity of the deed of gift, or his possession of the property specified at the time of the Nawab's death. The sequestration which had been made was accordingly withdrawn as soon as this was established, with the exception of the Mooglace Hucks, in Kucholee, the collection of which it did not seem advisable the petitioner should be permitted to make direct from the villagers, as was done in the Nawab's life-time. The management of them has been accordingly retained till the orders of Government shall be received regarding them. They form part of the estate of Abdoolla Beg, which was seised of the Nawaub, as related in Case No. 8, and will therefore be liable to be challenged by the heirs of that individual, should any decision on it be upheld; the present applicant, however, having been in possession of them at the time of the Nawab's death, they are now held to be his property. In the meantime the proceeds should be realised by the Mamlutdar of the pergunnah in which Kucholee is situated, and paid to him by the collector in the same way as to other huckdars of the Surat Zillah, provided that officer be satisfied, after inquiry, that they were originally alienated from the State on sufficient authority.

(signed) *R. K. Arbuthnot,*
late Agent for the Honourable the Governor at Surat.

Baroda,
3 November 1845.

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3 May 1856.

(B.) No. 13.

TRANSLATION of a Petition of Tutteh Mahomed, son of Kumal Mahomed, presented to the Agent for the Honourable the Governor.

No. 15.

THE Nawab Sahib employed me in his service from my infancy, and he was kind to me, nourished me the same as his child; consequently my life and property belongs to him, and I am at present in attendance on Bukhtyorooluissa Begum Sahib and Meer Jaffer Allee Khan Sahib, and they protect me as heretofore. The Nawab Sahib had bestowed on me in gift the following gardens and houses: the sunud of one of the gardens, situated in the village of Kutargaum, was given to me, copy of which is submitted with this petition. I manage the whole of them from the Nawab's life-time, and I enjoyed the revenue, which is known to the people of the Nawab's Sircar. It became necessary to present this petition to make known this circumstance to the Sircar. One garden in Kutargaum, near Wurruhija Dewree, with Eugoleers, containing 38 beegas, called Tetteh Bagh, copy of the deed of gift, is with this petition.

One garden, containing 13 beegas, situated at Bankapar; one garden containing 13 beegas, in the village of Khutoodra Hukeem Jakuria Wallee.

One house near the palace, outside the gate of New Nurwan, near Kutchery of Dewanjee.

One house, with stable of bamboo, outside the large gate of the garden.

(signed) *Tutteh Mahomed.*

(True translation.)

(signed) *R. K. Arbuthnot*, late A. G.

DECISION by the Agent for the Honourable the Governor, on the claim of Tulleh Mahomed Jemadar.

THIS applicant was for many years the personal attendant of the Nawab, and appears to have been regarded by him from his boyhood with great favour, of the property he now claims; only two gardens are in sequestration, viz., one at Bankapar, and the other, called Hukeem Jukurice Mallee. The rest having been in his possession at the time of the Nawab's death, were not considered as a part of his estate. He claims them on the ground that they were given to him by the Nawab by word of mouth, in his life-time, in the presence of witnesses, but he has completely failed to establish this point. He appears to have received the rent of the former garden for a year or two from the tenant, from whom he also took a lease in his own name; but the circumstances under which it was paid, do not bear out that the land was ever made over to him in gift, as asserted. A single witness, Mohunlal, a carkoon on the Nawab's establishment, deposes to the Nawab having said to him, "You will cause the rent of this garden to be paid to this applicant," upon which Mohunlal desired the tenant to do so. Nothing further passed between them, nor was he aware that it had been given to the Jemadar. The Nawab's Kharbhaxee, Mahomed Allee Beg, who had charge of the Nawab's land, asserts the same thing, and further declares he was not aware the Nawab had ever given any instructions to Mohunlal about the rent; under these circumstances the applicant's right to it cannot be upheld. The other, of field, the applicant states was given to him by the Nawab about two months before his death; but as he adduces no proof that this was the case, and it was certainly not in his possession when the Nawab died, his claim to it is likewise rejected.

(signed) *R. K. Arbuthnot*,
late Agent for the Honourable
the Governor at Surat.

Baroda,
3 November 1845.

B. No. 14.

3 May 1856.

TRANSLATION of a Petition from Bugwandass Gopaldass to Sir R. K. Arbuthnot, Bart., Agent for the Governor.

Sir,

No. 16.

I TOOK in mortgage two tracts of land, situated in the Rusba of Kuttargaum, the one in the year 1834, Hajie Sooleman, for 5,000 rupees, and the other in the year 1835, of Dulla Kessoor, for 1,301, the deeds of which, bearing the signature of the register, I have got in my possession. I being on friendly terms with Mirzoo Abdoolah Beg, he often used to frequent the gardens taken in mortgage by me, when the late Nawab was displeased with Abdoola Beg, he (the Nawab) sequestrated all his property at the time, and also seized upon the above land. I then brought the circumstances to the notice of the late Nawab, and asserted that the land in question was mine; "You have a friendship," said he, "with the above Mirza; and, therefore, after having examined the documents "of your land, it will be made over to you." He promised this so often, that I had reliance on his Excellency's words, and remained quiet; now the Nawab being dead, Government has issued proclamation, and whereupon having fixed the value of the gardens at 6,301 rupees, I am obliged to request that you, after receiving proofs of my having had the amount specified in the deeds to the mortgagee, &c., will order the land to be delivered over to me. I herewith submitted copy of this document. This is my Petition, 28 February 1844.

Order,—This will be investigated with other creditors of the late Nawab.

29 February 1844. (signed) *J. H. Pelly*, in charge.

(True translation).

(signed) *R. K. Arbuthnot*, late A. G.

DECISION by the Agent for the Honourable the Governor, on the Claim of Bhugwundoss Gopaldass.

THE gardens which are here claimed were taken possession of by the Nawab, along with the rest of the property of his late managers, Mirza Abdoola Beg, when he seized the estate of that individual, as stated in case No. 10. Since then they have been in the Nawab's own occupation. The present applicant claims them on the ground that they were mortgaged to him by their former owners, and that the mortgaged bonds are in his possession, made out in his name. It is, however, very questionable whether the gardens were ever made over to him, as it is understood the money on account of the mortgage was paid by Mirza Abdulla Beg, and the gardens transferred to him in security for the same; certainly they were in his possession when his estate was seized by the Nawab, and as the petitioner did not then bring the circumstance of his case to the notice of the authorities, his claim now cannot be viewed but with suspicion. They should be considered as belonging to the estate of Mirza Abdoolah Beg, and follow the course prescribed for the rest of the property of that individual.

(signed) *R. K. Arbuthnot*, late A. G.

Baroda, 3 November 1845.

B. No. 15.

(No. 17).

TRANSLATION of a Petition from Alcha Meeya Bin Mahomed Sneed to Sir Robert K. Arbuthnot, Bart., Agent for the Honourable the Governor, &c.

Sir,

A WASTE tract, the burial-ground of my ancestors, in the city of Surat, in the quarter of Toonkee of Rampoora, used to be contaminated by animals and men; I therefore appointed Mirza Ahmed Beg, the son of Mirza Ameer Beg, to be superintendent of it, and executed a deed of superintendence, the condition of which is that he should protect it by means of a thorn hedge, and might retain

3 May 1856.

possession of it so long as this was kept in good order. Sir, this person made the thorn hedge; but on the death of his brother, Mirza Abdoola Beg, his property and effects were confiscated by the Nabob of Surat. The land in question, and another piece of land near it, belonging to me, on which rooms for deeras had been constructed, were at the same time confiscated. The rent of these rooms have since been levied, and taken by the Nawab's Surkar; but his people did not keep my aforesaid ground in good order. I petitioned his Excellency the Nawab often on the subject, but his Karbharees would not represent my case to him; they unjustly took possession of my property, and my other private ground with rooms. They did not belong to Hamed Beg, therefore they had no right to take possession of them; nor do they keep the hedge in good order, according to the agreement of the deed of superintendence. It is therefore in my power, under the condition of the agreement, to resume the land. Now, in consequence of the death of Nawab, Government has issued a proclamation. It became, therefore, necessary for me to present this petition to recover possession of my land, as specified in the deed of bequest, and my private ground near it. I am in hopes, therefore, that the land specified in the deed of bequest (copy of which is herewith submitted for your consideration), and of my private piece of land near it, will be restored to me. The title deeds of the land were consumed in the conflagration of Mucklee Peat, at which time my house was burnt. This is my petition, February 29th, 1844, A. D.

PETITION of Acha Meeyam, the son of Mahomed Saeed,
residing at Beckhans Chukla.

(signed) *Acha Meeyan Mahomed Saeed.*

Ordered,—That this Will be investigated with the claims of the other creditors of the late Nawab. 29th February 1844.

(signed) *J. H Pelly,*
In charge of Agency.

(True translation.)

(signed) *R. K. Arbuthnot,*
Late Acting Governor.

DECISION by the Agent of the Honourable the Governor on the Claim of Atcha Meeya.

THE burial-ground which is here claimed had been made over by a "weekfuama," or deed of endowment, to Hamead Beg, the brother of Abdoola Beg, and formed part of the property belonging to him which was seized by the Nawab, as related in Case No. 11. As it is therein decided that the Nawab had no power to sequestrate the property of his servants or dependents, and particucularly of an individual who had left his service, as was the case with Ahmed Beg. I consider that the land in question, in accordance with my decision in that case, should be made over to Hamed Beg, after which applicant will be at liberty to sue him, in the ordinary course of law, for the recovery of his property, if the condition on which it was made over to him be not fulfilled. The ground claimed on which the huts are built would appear to have been in possession of the applicant at the time the Nawab seized it; it should, therefore, be restored to him, as the Nawab had certainly no right to take possession of his property. His claim for rent is inadmissible, as he did not at the time bring the circumstance of the illegal seizure of his property by the Nawab to the notice of Government or the authorities in Surat.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable
the Governor at Surat.

Baroda, 3 November 1845.

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3 May 1856.

B. No. 16.

(No. 18.)

TRANSLATION of a Petition from Moolchund Tashwalah to Sir Robert K. Arbuthnot, Baronet, Agent for the Honourable the Governor, &c.

Sir,

PULTAN MEERKHAN AZIMUT KHAN mortgaged to me his two houses, situated in the quarter of Bhurwar Phuleeya, near Nowsaree-gate, in the year 1245, for the sum of 75 rupees, and executed a deed to which the seal of Mooffee Jumaloodeen is attached. He also delivered to me the original title deeds. The deed of mortgage was likewise registered by the Sirkar. These houses he afterwards rented from me for 2 rupees per mensem. This Meerkhan was a horseman in the Nawab's Sirkar; he died about the year 1892 or 1893, when the Nawab forcibly seized upon the houses which I had taken in mortgage, the rent of which he also levied on his own account. I showed my bonds to the Nawab, but his Kharbharie, Meerza Mohomed Allee Beg, would not allow me to obtain redress. The said Meerza afterwards appropriated the materials of one of the houses to himself, and the other houses having lately fallen down, the materials have been taken by Sirkar. Sir, the deed of mortgage and the original documents of these houses are in my possession, therefore I hope you will be pleased to see them, and order the sum of 75 rupees on account of the mortgage, and 175 rupees for the rent up to this date, at 5 rupees per month; total 250 rupees, to be paid to me from the Sirkar of the Nawab; and that the land may be delivered into my possession, and 200 rupees as the value of the materials, together with an interest up to this date, that I may pray for you.

P.S.—Rs. 23½ have been received in part payment of the mortgaged bond, which having been omitted in the above statement is here mentioned. That sum being deducted, 51½ rupees remain as balance due to me on the original bond.

(signed) *Moolchund Tashewalla.*

(True translation.)

(signed) *R. K. Arbuthnot,* late A. G.

DECISION by the Agent for the Honourable the Governor on the claim of Moolchund.

As there are no grounds to doubt the truth of the applicant's assertion, that the houses mentioned in his application were mortgaged to him by Meer Khan Azmut Khan, I consider the ground on which they stood should be separated from the estate of the late Nawab, and made over to him; as, though it was the practice of the Nawab to seize and appropriate to his own use the property of his servants and relations in the event of their death, or at any time without regard to the rights of others, he had clearly no authority to touch any property in the possession of another who was not his servant. The present applicant having preferred no complaint against Nawab at the time his property was seized, I consider he is not now entitled to receive compensation on account of the rent of the house in question, or for the materials of the house that was pulled down in the lifetime of the Nawab. The materials of the other building, which has lately been pulled down to prevent it from falling, should of course be made over to him.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable
the Governor at Surat.

Baroda, 3 November 1845.

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3 May 1856.

B. No. 17.

(No. 17.)

Translation of the Petition of Seedee Joheir to Sir R. K. Arbuthnot, Bart., Agent for the Honourable the Governor at Surat.

The whole of the property of the late Nawab of Surat, containing of gardens, lands, houses, shops, and the revenue derived therefrom, has been placed in sequestration by the Government of the Honourable Company. The undermentioned property was also sequestrated, it having been considered the private property of the Nawab, viz.: a large mansion in the quarter of Meerjim Shamee, a bungalow in the Subzee Bazar, two stables, &c., room near the Delhi gate, or garden consisting of 9B. 16W. 19WW. of land in the village of Kuttergaum, in bungalow of four rooms near the Lal gate in Hydurpoora, a piece of land in Dhubolee, consisting of 3 beegas, 3w., and 24 beegas of land in Randier; but this property did not belong to the Nawab; it had been endowed for charitable purposes, and I am the superintendent thereof. Several other houses within the city are still in my occupation, and I possess a copy of the deed of endowment, attested by the seal of the great people of the city, &c. Several papers also connected with my claims, together with a copy of the deed, duly attested, were submitted by me to Messrs. Sutherland & Mills, which are on the Government records. The whole of the property above described was purchased by Seedee Jumrood, the emancipated slave of Meer Neezamoodeen Khan the late, who, during his life, of his own free will and pleasure, made over it for the charitable purposes of oblation to saints and the recital of Koran in the month of Rumzan, in commemoration of the Nawab Meer Neezamoodeen himself, and part of it he has also assigned for the maintenance of his dependents, and the repair of the houses and the large mansion. He gave up his title to it as proprietor, and took upon himself the superintendence of it during his life, assigning it after his death to his dependents. one after another in succession, to them and their posterity; he also executed a deed of endowment, in which the property is specifically mentioned, and the limits thereof defined, which deed is attested by the seals of Mooftee Nuzamoodeen, &c. As provided therein he retained the superintendence during his life, and after his death it descended to Mr. Rownuck Abza, who personally attended to it; after her demise it devolved on me, and after me it will be the undoubted right of the next after me of the trustees mentioned in the deed, or of my posterity; the property is therefore an endowment, and does not belong to the State of Nawab. Formerly, in consequence of a dispute amongst the dependants of Seedee Jumrood, the property in question was made over to the Nawab, to be held by him as a deposit, and from the produce of it he used annually to make an allowance for the purpose of the trust. It has now been taken under sequestration of Government, but it in no way belonged to the Nawab; he had merely the superintendence of it; in proof of which, besides the deed of bequest in my possession, I can produce documents and oral evidence: 1st. I have still possession of a bungalow, &c., within the city walls; 2d. I possess a decree of Court, No. 410 of 1816, which will make my claim evident to you. I beg further to state, that I presented a petition, with a copy of the deed of bequest, to Messrs. Sutherland & Mills, and that a detailed list of the property will be forthcoming from the records of the Sirkar of his Excellency the Nawab. My witnesses have been already produced, they are now also present; I hope therefore you will release the property from sequestration. It was my duty to petition, I have therefore done so. May the sun of your fortune be shining and glittering. Written on the 29th Mohurrum, 1261, A. H., corresponding with 29th February 1844, A. D.

(signed) *Seedee Johar.*

(True translation.)

(signed) *R. K. Arbuthnot*, late A. G.

Decision

DECISION by the Agent for the Honourable the Governor on the Claim of Seedee Johur. 3 May 1856

SEEDEE JUMROOD was the emancipated slave of Meer Nizamooddeen Khan, Nawab of Surat. He afterwards acquired property, which he endowed for charitable purposes during his own life, to which effect he also executed a wakfnama, or deed of endowment, wherein the names of the persons who were to carry on the trust after his death were specifically mentioned. The first of these, a woman, on the death of Seedee Jumrood took charge of the endowed property, but in a short time she was deprived of part of it, consisting of lands in Randier, &c., by Nawab Meer Nusseerroddeen Khan, who succeeded his father, Meer Nizamooddeen. Seedee Johur, the present applicant, who is also named in the weekgnama, as one of the trustees, was at the time in Egypt, whether he had gone on a trading excursion. On his return to Surat he brought to the notice of the English Chief the spoliation of which Meer Nusseroooddeedden Khan had been guilty; upon which an injunction was issued to the Nawab to settle the case. An arrangement was accordingly made, by which a monthly allowance in money and grain was granted to the trustees in view of their lands, and this apparently at the time satisfied them. The allowance in question was continued till the Meer Nusseerooddeen Khan, and for some time after the succession of his son, Ufzooladdeen, who then began gradually to reduce it, till at length he agreed to give them no more than 4 rupees a month. Seedee Johur, who by this time had come into the charge of the endowed property, again petitioned the Government of Bombay on the subject, by whom a reference was made to the Agent at Surat for his report. Mr. Sutherland, who was Agent at the time, replied to this reference at length on the 8th October 1836. He then states that the petitioner had previously appealed to him; but as in his own opinion he had failed to show that he had ever been regarded in any light but as a dependent on the Nawab, who by usage was supreme in all matters within his own jurisdiction, he had declined to take cognizance of his claim. He added, however, that, although the previous custom and usage were against the petitioner, yet as the words of the treaty of 1800 restricted the jurisdiction of the Nawab to his relations and servants; and as in this confined and true sense of that document the petitioner ought to be regarded as a native subject of the British Government, and as such entitled to protection, if the Government took the same view of the case, he would make a representation to his Excellency on his behalf. To this the Government replied that, although the jurisdiction in such a case as that of the petitioner was undoubtedly with the British Government, yet as usage was against our exercising any authority over him, they only directed that a representation should be made to his Excellency regarding this case, which, as they observed, was as much forbearance on the part of the Government as the Nawab could expect in a case of injustice. The case was accordingly brought to the notice of the Nawab, but without effect; and subsequently another reference to Government was made by the Agent, Mr. Urbart, dated 23d September 1837, requesting to be informed whether he should take any steps in the business, adducing that, in his opinion, no case had been made out to call for further interference. To this no reply was received, and things have since remained *in statu quo*. Seeder Johur has now applied to have the lands which the Nawab enjoyed to him. I quite agree with Mr. Sutherland, that the petitioner is entitled to the protection of Government as a British subject. But there is no doubt he acquiesced in the arrangement, that was by Meer Nusseroodden Khan, by which an allowance in money was granted to the trustees of the Wakf property in lieu of their lands, &c.; I think he has no claim whatever to their restoration. I am, however, of opinion, that it would be a proper provision should be made out of the proceeds of the Nawab's estate for the purpose of trust to the extent of 40 rupees per mensum, as settled by Meer Nussereerooddeen Khan.

(signed) *R. K. Arbuthnot*,
Late Agent for the Honourable the Governor
at Surat.

Baroda, 3 May 1845.

3 May 1856.

B. No. 18.

TRANSLATE of a Petition from Fugeera, *alias* Oumra Sing Malwjee, dated 19th, and presented to the Agent on the 21st February 1844.

I WAS in the service of the Nawab as an attendant; he was very kind to me, and had a silver anklet made for me, which he gave to me and which I constantly wore. On the day the Nawab departed this life I took it off, and placed it in a cupboard which belonged to the Sircar; it was consequently included in the memorandum which Meer Jafer Alee Khan Sahib had made of the Nawab's property, on which account I could not get it back. That it was given me by the Nawab is known to Meer Jafur Alee Meerza, Mahomed Allee Beg and Jamddar Futch Mahomed, and many other people; I therefore hope you will be pleased to inquire of them, and cause it to be restored to me.

A silver ring was also given to me at the same time as the anklet in question, which is now on my foot; this I mention for your information.

(signed) *Fugueera*, alias *Oomroo Sing Malwojee.*

(True translation.)

(signed) *R. K. Arbuthnot*, late A. G.

DECISION by the Agent of the Honourable the Governor on the Claim of Oomras Sing Malwojee.

FULL proof has been adduced that the ornament, which is here claimed by the petitioner, was given to him by the Nawab, his right is therefore admitted, and the ornament ordered to be restored to him.

(signed) *R. K. Arbuthnot*,
Baroda, 3 November 1845. Late Agent for the Honourable the Governor of Surat.

B. No. 19.

TRANSLATION of a Petition from Mirza Gool, *alias* Mirza Goomanee, presented to the Agent for the Honourable the Governor, on the 21st February 1844.

A portion given with a daughter.

OUR grandfather Munawar, *alias* Kamran Khan Saheb, gave his daughter in marriage to the Nawab of Surat; on that occasion a garden and jehez * to the value of two lacs of rupees were granted as (moostour) or loan. Sir, on the death of our relative, the jehez, the said garden and dowry of the deceased have been kept to the present time in deposit; it is clear we have a right to them in accordance with the Mahomedan law; they should therefore be given (to us). If proof is required, the said garden is in existence, and the deed is in the Sircar of the Nawab Sahib; send for it and inquire. The notification is cause of the presentation of this petition.

Petition of *Mirza Gool*, alias *Mirza Goomanee.*

(True translation.)

(signed) *R. K. Arbuthnot*, late A. G.

DECISION

3 May 1856.

DECISION by the Agent for the Honourable the Governor on the Claim of Mirza Gool, *alias* Mirza Goomanee, &c.

THE claim here brought forward was formerly urged in a petition to the Honourable the Governor in Council, which was submitted to my predecessor for his report on the 6th July 1837. His reply is dated the 18th idem. It is to the effect that the petitioner had formerly brought his case to the notice of Mr. Sutherland, who refused to take it up, on the ground of the length of time that had elapsed since the cause of action had commenced; viz., 50 or 60 years. Mr. Vibart sent for him, and further examined him on the subject, when he stated his inability to bring forward any proof in support of his claim, or even to state to what he was entitled, except by report. Under these circumstances it was disallowed, and for the same reason is now rejected.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

B. No. 20.

TRANSLATION of a Petition from Hakeem Kumalooddeen, dated 24th, and presented to the Agent on the 27th February 1844.

I BEG to represent that two volumes printed in Bengal, one of them a Koran, and another the picture of stars and others, one side printed in English, and the other in Persian; also a volume unbound in two or three sections, containing a history of Fuqueer Alee Mugdoom Saheb, whose tomb is at Mahim, near Bombay, published by the Qazee of Bombay; these three works were taken by the deceased Nawab for the purpose of having them copied. I asked Mirza Mahomed Allee Beg to return them to me after the death of the Nawab, but he said every thing was under the sequestration of Government. I then applied to the Khan Bahodoor Ardasir, and have now to request that these books may be restored to me as soon as settlement of the Nawab's affairs has been affected.

(signed) *Hakeem Kumalooddeen.*

(True translation.)

(signed) *R. K. Arbuthnot,*
Late Agt Gl.

DECISION by the Agent for the Honourable the Governor on the Claim of Hukeem Kumalooddeen.

THE books here claimed cannot be found among the property that has been sequestraed. Meer Jafur Alee was written to, to ascertain if he knew any thing about them; he sent for answer that he did not. Under these circumstances, the petitioner is to be informed that his request cannot be complied with.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

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3 May 1856.

B. No. 21.

TRANSLATION of the Petition of Dosunboo, Daughter of Seedee Mahomed Vullundry Seeda Moojupper, to the Agent for the Honourable the Governor at Surat, dated 8 May 1845.

MY representation is this: When my father, Seedee Mahomet Vulled Seedee Moojupper, died, my eldest brother, Seedee Kassum, had gone on to travel; I and Allee Khan were minors. My grandfather, Seedee Moojupper, was catwal of the city. The Nawab Meer Nasseerddeen Khan consequently, out of respect for him, and as we were going, sent for us to his palace, intending to bring us up. Afterwards my elder brother returned from travelling, when he and all of us were well supported by the Nawab. When I became of age he got me married, at a great expense; in lieu thereof he took possession of a great deal of property which belonged to my father. Two houses in Rohellwara, near a place called Bawaghore, were retained for the use of my elder brother, Kassem Meeah, and Name Allee Meeah. In the meantime both my brothers left the city, after which the Nawab died, till which time, and subsequently, the Begam Sahib protected me. After Meer Ufgoolood Deen Khan became Nawab, I used to go several times in the year to make my salam to him, at which times he used to pay me certain sums on account of the rent of the houses which were kept for my brothers, but how much and how often I received the money I do not recollect; but from the rent of those houses I supported myself and two or three others. Since the Nawab's death I have been put to great inconvenience, as no one has paid me anything. You, Sir, have made arrangements regarding the maintenance of the Nawab's dependents, but nothing has been done for me. I therefore beg you will confer your favour on me by taking my case into consideration, and allow me the houses as above-mentioned, so that from the rents of them I shall be maintain myself according to the respectability of my forefathers. I have heard that both my brothers are at Baroda.

(signed) *Dof Sunboo.*

(True translation.)

R. K. Arbuthnot, late A. G.

DECISION by the Agent for the Honourable the Governor on the Claim of Dusunboo.

THE petitioner is unable to adduce any proof in support of her claim; she is in no way connected with the Nawab; and as the houses in question were in the undisputed possession of Nawab Meer Nusseerooddeen Khan, from whom they descended to his son, the late Nawab, she is now considered to have no right to them. I am unable to discover from his records that she ever received any money on account of them, as she asserts. Her claim to be put in possession is accordingly disallowed.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Baroda, 3 November 1845.

B. No. 22.

TRANSLATION of a Petition from Mirza Mogul Beg, Son of Mirza Wahed Beg, dated the 3d May 1845.

I HAVE received your Honour's order of the 17th April 1845, endorsed on the back of my petition, directing me to present one, specifying the particular property claimed by me. I now beg to represent that the under-mentioned houses (wuzefas) are those which descended to my ancestors from Mahomed Chellubbee, and

and which the Nawab sequestered; therefore be so good as to investigate and restore them, together with the income which was derived from them by the Nawab. 3 May 1825.

One Godee in the village of Uthwa, and land containing,

Ten beegas.

One garden, containing about four beegas, near the Luckercote Gate.

A land of Bhattee, containing 10 beegas, out of the Luckercote Gate.

Five houses in the Soudargar Wara.

Six houses in the Toorkee Wara.

Dated 3 May 1825.

Petition of Mirza Mogul Beg.

Petitioners, Mokhtyar.
Nundram Neehalchind.

(A true translation.)

(signed) *R. K. Arbuthnot,*
Late Acting Agent.

Decision by the Agent for the Honourable the Governor, on the Claim of Mirza Mogul Beg.

From a genealogical table which was furnished to the Agent for the Honourable the Governor by the Nawab in his lifetime, it would appear that petitioner and a woman of the name of Bee Kootsom, are collateral heirs of Saleb Chellubbee, whose property fell into the possession of the Nawab Meer Ufzoolooddeen Khan, in right of his first wife, who was daughter of that person. They are, however, unable distinctly to show their descent, and as the property claimed by them now, for the first time, has been for a long time in the Nawab's possession undisputed, it would seem unnecessary to make further inquiries respecting it. I may observe, that the property in question was made over to the Nawab by his mother-in-law, Makenjee Khatoon, during her lifetime, and when it was generally considered that Saleb Chellubbee had died without heirs. It is not clear that the property specified in the petition formed a part of his estate; it may have formerly belonged to Mahomed Chellubbee, from whom, they state, it descended to their ancestors, but there is no proof of this fact; nor does it appear that the Nawab ever took possession of any part of that property of that individual. This claim is accordingly disallowed.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the
Governor at Surat.

Baroda, 3 November 1845.

B. No. 23.

Translation of a Petition from Meeah Mahomed, Son of Ukrun (Mahomed), and others, to the Agent for the Honourable the Governor, dated 25 June 1845.

We, the undersigned, inhabitants of Surat, beg to represent that the daughter of Chellubbee Sahib Makaee Khatun, during her life, of her own accord, an endowment be religious purpose give in weeks., in the year 1227 Hijree, a pucka built hawillee and some smaller buildings for the purpose and expenses of the mosque of Chelabbee Sahib, and executed a deed to that effect, in which this is written, that the expenses of the mosque, viz., oil for the lamps, &c., servants' wages and repairs, should be defrayed from the rents of the said houses; they were at the same time given in charge of the Mootawallee (overseer) of the mosque,

3 May 1856.

the aforesaid Meeah Mahomed Chaee, son of Mahomed Ukrum Chaee Bejapooree; the other buildings were also given into his possession; these he retained in his charge for three years; afterwards, when the Nawab of Surat took possession of the buildings of Chelubbee Sahib, he also seized the said five buildings, Havellee, &c., above adverted to, which had been endowed; we represented the circumstances to the Nawab, who told us he would defray the expenses of the mosque, and keep charge of the buildings. Sir, from that day until the death of the Nawab the expenses were defrayed by him, and after his death his son-in-law Jafur Alee Khan continued to do so according to ancient custom; but four days ago he told the person employed to sweep the mosque to inform the Numajees, or persons appointed to read the prayers, that he did not intend to defray them any longer, as the houses had been taken charge of by the Honourable Company's Government. Sir, as this property was given in wakg., neither the Sirkar nor any person has a claim to it, which will be known to you by looking into the documents we possess. It has therefore become necessary for us to request that you will be kind enough to direct the Karbharree, in charge of the Nawab's property, to continue for ever the expenses of the mosque to us, in the same manner as was done by the late Nawab, and after his death by his son-in-law; if you do not agree to this, we pray that the property given in wakg. may be made over to us for the expenses of the mosque. It is most necessary at present to repair the said mosque. This is our representation for your information.

(signed) *Meeah Mahomed*, Son of Mahomed Ukram.
Meeah Ahmud Unllas Abdool Rehman.
Golam Mahomed Juroola, and others.

STATEMENT of the Expenses incurred in the Mosque of Chelubbee.

1 Rupee per month to Mooazum or Crier.
35 Siers of grain per month.
2 Rupees per month Eemaum.
10 Siers of oil per month.

Expenses of the Month "Rumzan."

	Rs.	*a.*
To Emaum for "Turavee"	5	–
Sheernee (sweetmeat)	7	–
One maund of oil	2	8
Chouam bricklayers' and labourers' wages	5	–
	19	8
To waeejee (one who reads the Koran)	10	–
Tubarook, on the 12 of each month	5	–
Expense of the last day for five maunds of poolau	15	–

Annual Expenses.

Four buckets	2	–
Ditto ropes	–	5
Lamp and cotton	–	8
Earthen pots	1	–
To watermen for filling the Henz	3	4
TOTAL	*Rs.* 56	9

Besides grain, &c.

(True translation.)

(signed) *R. K. Arbuthnot*, late A. G.

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3 May 1856.

DECISION by the Agent for the Honourable the Governor on the Claim of Meeah Mahomed.

THE property here claimed it would appear had been regularly endowed by Makaye Khatoon, the daughter of Saleh Chelubbee, and mother-in-law of the late Nawab, and transferred by her during her life to the management of Meeah Mahomed, who was appointed superintendent of it. The Nawab had consequently no right to appropriate it, nor does he appear to have done so altogether, as certain allowances in money and grain, &c. were annually granted by him on account of the Mosque. The ruling authority, even against the express wish of the proprietor, it would appear is also permitted by the Mahomedan law to exchange endowed property when such a measure is advantageous to the trust. In this case the Nawab certainly was not the ruling authority, nevertheless in his anomalous position as he may have felt he had a right to assign an allowance on account of the expenses of the Mosque in lieu of the property which had been appropriated for that purpose, and the superintendent acquiesced in the arrangement; I think his act should not now be questioned. It is accordingly decided that the buildings claimed properly belong to the Nawab's estate; but an equivalent in money should be paid therefrom to the superintendent, for the purposes of the trust, as settled by the Nawab.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable
the Governor at Surat.

Baroda, 3 November 1845.

C.

To *R. K. Arbuthnot,* Bart., Agent for the Honourable the Governor at Surat.

Sir,

WITH reference to your proclamation (No. 1,025, dated 19 December 1843), notifying that all persons claiming as heirs, or otherwise to participate in the estate of His Excellency the late Nawab of Surat, should, within two months from that date, make written application to you, accompanied by such proofs as might be necessary to substantiate their claims; I have the honour to submit, for your information, the accompanying account of the monies expended by me for the obsequies of the Nawab, and for the maintenance of his late Excellency's establishment, from the time of his decease up to the 19th instant, and the total amount of which, with interest on the same, (in all, *Rs.* 1,08,439. 10. 0.), I claim, as a creditor of the estate. The necessary proofs in support of my claim will be found in the dufturs of the establishment, which I am ready at once to produce for your satisfaction.

It should be added, that the expenses of the establishment are still going on, and that a further sum will be due when the present claim is settled, of which a supplemental account will then be rendered.

I have, &c.

Surat, 26 February 1844. (signed) *Meer Jafur Allee Khan.*

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3 May 1856.

MEMORANDUM from 9th August 1842 up to 19th February 1844.

	Rs.	a.	p.
Paid part of the debt of the late Nawab	10,555	5	9
Funeral expenses	18,254	12	9
Moodeekhans	16,450	4	–
Servants' pay	44,012	15	3
Grass and curbee, &c.	5,236	6	3
Miscellaneous charges	6,654	7	9
TOTAL Rs.	1,01,164	3	9
Interest on the same at the rate of 12 annas per cent. per mensum	7,275	6	3
TOTAL Rs.	1,08,439	10	0

Rupees, One lack eight thousand four hundred thirty-nine and ten annas.

(True copy.)

(signed) *Meer Jafur Allee Khan.*

TRANSLATION

LIST of the INTERESTS upon the AMOUNTS Borrowed by Meer Jafor Allee Bahadoor of the undermentioned Sowcars, to provide for the 30th June 1845. The Accounts of the Expenditure of the original Sums have been

Numbers.		1842					1843				
		August.	September.	October.	November.	December.	January.	February.	March.	April.	May.
		Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
1	Muncharem Jugjerwundass Sett.	4,962 12 6	15,914 3 –	4,309 10 6	3,961 6 3	7,822 10 3	3,980 1 6	4,983 3 –	1,990 1 –	2,079 2 9	– – –
2	Pranjeewundass Jummadass Parhe.	500 – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	2,000 – –	– – –
3	Her Excellency the Begum	– – –	– – –	– – –	– – –	– – –	– – –	– – –	650 – –	513 – –	237 – –
4	Kerooshalchund Umbarrdass Sett.	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	3,247 – –
5	Atmararm Buckandass	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –
	TOTAL	5,462 12 6	15,914 3 –	4,309 10 6	3,961 6 3	7,822 10 3	3,980 1 6	4,983 3 –	3,641 1 –	4,591 2 –	3,481 7 6

Surat, Palace of the Nabab, the 31 July 1845.

3 May 1856.

TRANSLATION of a Letter from Meer Jafur Alee Khan Bahadoor to *W. C. Andrews*, Esq., Agent for the Honourable the Governor.

A. C.

I BEG to bring to your notice that I borrowed sums of money, at the rate of 12 annas per cent. per mensum, of the sowcars, for the maintenance of the family and dependants of my father-in-law, Meer Afzooloodeen Khan, the late Nawab of Surat, up to the end of March 1845, which is the time when pensions were arranged for some of them by Government, and the accounts of the original sums, commencing from August 1842 up to the end of October 1843, with English translation, has been forwarded to the agent for the Honourable the Governor on the 30th June last. The balance due to me then was, Eighty-four thousand one hundred and sixty-three rupees one pie. The interests upon the sums are daily increasing. In the meantime, I beg herewith to enclose the accounts of the interest, with its translation, commencing from August 1842 up to the end of June, amounting to Nineteen thousand and ten rupees and six annas. The total sum of rupees, both original and interest, amounts to One lack three thousand one hundred and seventy-three rupees, six annas, and one pie, up to the end of June last. I write this for your information: what more I shall write. May the days of your happiness and success be perpetuated.

Rs. 84,163. 0. 3.

Rs. 19,010. 6. 0.

Written on the 31st July 1845 A.D.

Maintenance of the Family and Dependants of His Excellency the late Nawab of *Surat*, from the Month of August 1842 up to the forwarded to the Agent for the Honourable the Governor on the 30th June 1845.

1843							1844		Total of the Original Sums	Interest from August 1842 up to the 30th June 1845, as per Separate Paper, from No. 1 to 6.	GRAND TOTAL of the Original with the Interest.
June.	July.	August.	September.	October.	November.	December.	January.	February.			
Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
- - -	- - -	15,006 - -	- - -	- - -	- - -	- - -	- - -	- - -	65,000 - -	15,669 - 9	80,669 - 9
- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	2,500 - -	567 5 -	3,067 5 -
100 - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	1,500 - -	325 2 6	1,825 2 6
1,334 2 9	- - -	- - -	371 5 9	- - -	- - -	- - -	- - -	- - -	5,000 - -	997 11 -	5,997 11 -
- - -	- - -	- - -	- - -	- - -	4,000 - -	1,900 - -	1,000 - -	3,263 - 1	10,163 - 1	1,451 2 9	11,614 2 10
1,484 2 9	- - -	15,000 - -	371 5 9	- - -	4,000 - -	1,900 - -	1,000 - -	3,263 - 1	84,163 - 1	19,010 6 -	10,371 6 1

3 May 1856.

AMOUNT of Sundry EXPENSES made by *Meer Jafur Allee Khan Bahadoor*, on account of the late Nawab's Estate, in taking care of the Property, &c., after the 1st November 1843, and whilst the same was under Sequestration.

Months.	Nos.		Rs.	a.	p.	Rs.	a.	p.
		Food and hay for horses, &c.	-	-	-	776	7	11
		Ditto - for elephants	-	-	-	647	4	6
		Medicine for horses, &c. :						
1843: Nov.	-		13	5	3			
„ Dec.	-		10	-	3			
1844: Jan.	-		7	6	6			
						30	12	-
		Celebration of the second anniversary of the death of the late Nawab	-	-	-	117	2	11
		Repairing the Kosser Bullocks:						
		Bucket of the Nuggeena Bagh	10	5	-			
		Ditto - the roof of the stable behind the palace	-	12	6			
						11	1	6
	2	Arabs employed at the Durya Mehel for five months, at the rate of 7 rupees per month	-	-	-	70	-	-
	1	Peon, employed in the mint for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	20	-	-
	1	Ditto employed at the Cheer Kin Mehel, for five months, from November 1843 to March 1844, at 7½ rupees per month	-	-	-	37	8	-
	1	Ditto, employed at the Lal Haveller, for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	20	-	-
	1	Ditto, employed at Chullerber Sahib's house, for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	20	-	-
* 5. 0.	1	Ditto, employed at Elhahee Bagh, for five* months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	68	-	-
	1	Ditto, employed at Kadir Bagh, for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	68	-	-
	1	Ditto, employed at Afzul Baugh, for 17 months, from November 1843 to March 1845, at 5 rupees per month	-	-	-	85	-	-
	2	Ditto, employed at Abdoola Brg^s. house, for five months, from November 1843 to March 1844, at 8 rupees per month	-	-	-	40	-	-
	1	Ditto, employed in the stable at the back of the palace, for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	20	-	-
	1	Ditto, employed at Mahumdee Baugh, for 17 months, from November 1843 to March 1845, at 4 rupees per month	-	-	-	68	-	-
	1	Ditto, employed at Dadi Ellaher Baugh, for five months, from November 1843 to March 1844, at 4 rupees per month	-	-	-	20	-	-
	16	Ditto, employed to take care of the late Nawab's articles, for five months, from November 1843 to March 1844, at 92 rupees per month	-	-	-	460	-	-
		Moola Wullee Mahomed, for 17 months, from November 1843 to March 1844, at 3 rupees per month, in the mosque	51	-	-	—		
	1	Moola Noor Mahomed, over the tomb of his Excellency the late Nawab, for 17 months, from November 1843 to March 1845, at 3 rupees per month	51	-	-	2,681	4	10
	3	Gardeners of Nuggeena Bough, from August 1843 to March 1844, for eight months, at *Rs.* 11. 4. per month	90	-	-	—		
	5	Ditto of Kadree Bagh, for eight months	—			—		
* 3. 0.		Ditto, ditto, at 12 rupees per month	144*	-	-	—		
	3	Ditto of Azoolbagh, for eight months, at 11 rupees per month	88	-	-	322	-	-

AMOUNT of Sundry Expenses made by *Meer Jafur Allee Khan Bahadoor*, &c.—*continued.*

Months.	Nos.					Rs. a. p.	Rs. a. p.
	4	Bullocks of Nuggeena Bagh:					
		12,000 bundles of hay -	Rs.	36	– –		
		Oil cake, 30 maunds -		12	– –		
		Grain, 23 ¾ ditto - -		15	13 4		
						63 13 4	
	3	Bullocks of Kadree Bagh:					
		900 bundles of hay -		27	– –		
		Oil cake, 15 maunds -		6	– –		
						33 – –	
	4	Bullocks of Afzoolbagh:					
		12,000 bundles of hay -		36	– –		
		Oil cake, 15 maunds -		6	– –		
						42 – –	
	2	Bullocks of Luckudkhand:					
		6,000 bundles of hay -		18	– –		
		Oil cake, 7 ½ maunds -		3	– –		
		Grain, three ditto, and five seers		8	12 –		
						29 12 –	
	3	Bullocks of the mill:					
		9,000 bundles of hay -		27	– –		
		Oil cake, 15 maunds -		6	– –		
		Grain, 15 ditto - -		10	– –		
						43 – –	
							211 9 4
						Rs.	3,214 14 2

Surat, 30 June 1845. (signed) *Meer Jafur Allee.*

(True copies.)

(signed) *R. K. Arbuthnot*, late A. G.

DECISION of the Agent for the Honourable the Governor on the Amount expended by Meer Jaffur Allee after the Death of the Nawab of Surat.

FROM the statements and accounts furnished by Meer Jafur Allee in support of the first item of the statement which accompanies his present application, it appears that immediately after the death of the Nawab he paid the arrears of wages and other pressing claims due by his Excellency up to that period, amounting, in the aggregate, to *Rs.* 10,438. 4. 3. This was done at his own risk. There is, however, no reason to doubt the validity of the claims which he settled; and as he has now furnished minute details of the expenditure as well as particular lists of the persons to whom the wages, &c., were due, I am of opinion the Nawab's estate should be charged with the amount. Meer Jafur Allee's accounts are not kept with much regularity; they are written chiefly on loose memoranda, which afford little or no confidence in their authenticity, on which account it was a question with me whether the claim he has advanced, founded on such imperfect data, should be admitted; I am told, however, that same system prevailed in the Nawab's lifetime, and, therefore, altogether to reject his claims in consequence of the informality of the accounts might be hard under all the circumstances of the case. It would, moreover, benefit the heirs of the Nawab in a degree they have no just grounds to expect, as the claims which Jafur Allee says he settled were justly due; this claim is, therefore, admitted to the extent exhibited in the accounts rendered. The amount differs from that shown by Meer Jafur Allee in first item of the statement which accompanies his letter; but till his accounts were properly examined and made up this is not to be wondered at, considering the imperfect manner in which they were kept.

The second item in the statement above mentioned, is a claim for the funeral expenses of the late Nawab. The same observations apply to the detailed accounts furnished in support of it as in the case of the arrears. But,

3 May 1856.

for similar reasons, it should be admitted to the extent exhibited, viz., *Rs.* 17,483. 0. 3. Considering the rank of the deceased, and that the expenditure extended over a period of 12 months, during which it was incumbent on the family to give large entertainments according to the custom of Mahomedans of rank, I do not think that amount is exorbitant.

A sum of *Rs.* 1,090. 0. 1. is also admitted as a charge against the Nawab's estate for feeding his elephants and horses, from the date of the promulgation of the Governor-general's decision regarding the succession till they were disposed of by public auction, and for which detailed accounts have also been rendered. This item does not appear in the statement at first furnished by Meer Jafur Allee, but was embraced in the detailed accounts subsequently given in by him.

The other items of Meer Jafur Allee's claim are charges for the maintenance of the Nawab's household and establishment, from the time of his decease till the decision of the Bengal Government was communicated to him, on the same scale as during the life of his Excellency. These are disallowed, as having been incurred by Meer Jafur Allee entirely on his own responsibility; they cannot be considered to form a legitimate charge on the Nawab's estate to the prejudice of his legal heirs. His claims on this account will, however, be separately submitted for the consideration of Government.

Meer Jafur Allee has separately advanced a claim for interest to the extent of *Rs.* 19,010. 0. 6. on the balance due to him, as exhibited in the accounts he has rendered, on the grounds that he was obliged to borrow the money from the sowcars to meet his disbursements. He has given in a statement of the bankers from whom he received it, showing the principal and interest which is due to them. I consider, however, that he is not entitled to the interest he claims, as it was entirely at his own risk and responsibility that he maintained the establishment on the scale he did; and in reality it was more from a personal consideration for his own dignity than from a desire to be of service to Government that he did so. He was not asked to take charge of the establishment, and ought not to have done so if he had not the means of maintaining it without incurring a debt on that account. His claim to interest is, therefore, rejected, as well as a separate claim he has advanced for *Rs.* 3,050. 11. 11. for taking care of the property in sequestration after the decision of the Governor-general was made known, as his expenditure on that account was also made without the sanction of the Agent for the Governor, who had charge of the property in question, and in keeping persons to look after it. I believe that Meer Jafur Allee's object was not so much to protect it as to maintain, by the apparent possession which the presence of his people afforded, the proprietary right to it which he had advanced as the sole heir of the Nawab in right of his wife.

From the sums which have now been awarded to Meer Jafur Allee several items received by him belonging to the Nawab's estate have to be deducted, viz.—

	Rs.	*a.*	*p.*
The rent of Wuzeefa lands, houses, &c., received from the tenants - - - - -	5,210	6	–
Balance of cash in the Nawab's treasury at the time of his death - - - - -	1,151	3	6
Various sums recovered from the karkoons formerly in charge of the Nawab's expenditure, who had overcharged the accounts -	1,039	–	–
TOTAL RUPEES - - -	7,400	9	6

As well as a sum of 13,000 rupees advanced to him from the proceeds of the estate under the orders of Government, dated 14th March 1843, and the price of an elephant, several horses, and other articles belonging to it, which he was permitted to retain at a valuation, under the authority of Government, dated 19th December 1843, No. 3,241, which has yet to be determined.

(signed) *R. K. Arbuthnot,*
Late Agent for the Honourable the Governor at Surat.

Baroda,
3 November 1845.

STATEMENT showing the Names of the CREDITORS of His late Excellency the NAWAB of *Surat* at the time of Decease, the Nature and Amount of their Claims, and the Amount which has been Allowed and Disallowed by the Agent Governor at Surat, after a careful Inquiry.

No.	Names of the Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
1	Mahomed Alee, butcher - -	On account of mutton supplied to the Nawab during the ceremonies of the Mungee, and marriage of the Nawab's daughters, and other occasions.	2,200 – –	- - -	2,200 – –	1,236 4 9	963 11 3	Proved by reference to the Nawab's dufters to the extent of *Rs.* 1,436. 4. 9.; but 200 rupees were ordered to be deducted on account of the inferior quality of the meat supplied. *Rs.* 1,236. 4. 9. is therefore allowed.
2	Kooverjee Edulgee - - -	Brokerage on the purchase of a garden, called Lal Baree, situated near the Muydora-gate, by the Nawab, for 2,500 rupees, in Sumvut 1898, A. D. 1842.	50 – –	- - -	50 – –	50 – –	- - -	The validity of this claim has been admitted by the Nawab's kirbaree.
3	Kooverjee and Baparjee - -	Sundry articles sold to the Nawab in Sumvut 1898, A. D. 1842.	47 10 –	6 – 10	53 10 10	47 10 –	6 – 10	Proved by reference to the Nawab's accounts, being for articles supplied; interest disallowed.
4	Baee Prankoover, widow of Gullahbahee, and guardian of Dulleechund, standing in the name of Hurruck Mund.	Balance on account of kinkhob and humroo purchased by the Nawab, from Sumvut 1895 to 1898.	595 11 5	78 6 –	675 – 6	596 10 6	78 6 –	Ditto - - amount to be paid on the production of a certificate of guardianship.
5	Mooljee Dona - - - -	Balance on account of coarse cloth, chintz, and tents sold to the Nawab in Sumvut 1898, A. D. 1840–41.	549 1 3	78 1 –	627 2 3	549 1 –	78 1 3	*Vide* Remark at No. 3.
6	Soonderjee Jetabhaee - -	Balance of teak wood sold to the Nawab from Sumvut 1895 to 1898, A. D.	16,751 – 3	3,185 7 9	19,936 8 –	16,750 10 –	3,185 14 –	- - Ditto.
7	Hureebaee Nuthoo - - -	Balance on account of brat cloth supplied to the Nawab.	480 3 –	68 12 –	548 15 –	480 3 –	68 12 –	- - Ditto.
8	Rugnath Hurrabhaee - -	Cotton supplied to the Nawab and workmen for stuffing beddings.	34 2 6	4 5 1	38 7 7	34 2 6	4 5 1	- - Ditto.
9	Bhugwandas Gopaldass - -	Balance of a sum borrowed by the Nawab on a note of hand, dated 11th August 1837.	193 4 –	985 – –	1,178 4 –	498 7 4	679 12 8	Note of hand was for *Rs.* 1,693. 4., on account of a pair of chandeliers sold; it bears interest; 1,500 rupees paid in the lifetime of the Nawab; balance *Rs.* 193. 4. Allowed, with interest to the Nawab's death.
10	Hurjeewandass Briz Sallubdass	Ditto on account of kin kob and humros (a kind of silk cloth) sold to the Nawab.	1,025 11 3	130 12 –	1,156 7 3	1,025 11 3	130 12 –	*Vide* Remark at No. 3.
11	Treebhoundass Moteechund, trading in the name of Narrain Beetur.	Ditto on account of lace, &c. sold to the Nawab.	422 8 –	192 5 –	614 13 –	422 8 –	192 5 –	- - Ditto.
12	Kawasshaw Pectonshaw Parsee	1,200 rupees borrowed from his grandfather by the Nawab Meer Nusseerood deen Khan, in the year 1233 Hizree, and 400 rupees borrowed by the late Nawab.	1,600 – –	- - -	1,600 – –	- - -	1,600 – –	The late Nawab repudiated the claim in his lifetime. It is of very old standing, as the notes bear date 38 and 39 years ago, during which time the debt was not recognised by the payment of interest, or in any other way. It is therefore rejected.

(*continued*)

STATEMENT showing the Names of the Creditors of his late Excellency the Nawab of Surat, at the time of Decease, &c.—*continued.*

No.	Names of the Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
13	Phoolchund Goolabchund, manager of the firm of Moteechund Vuckuchkund.	Due on a note of hand by the deceased Nawab in Sumvut 1898, or 29 May 1842, for 3,000 rupees.	3,000 – –	464 – –	3,484 – –	3,445 10 4	18 5 8	There is no doubt of the validity of this note, the full amount is therefore allowed with interest to the date of petition.
14	Merswanjee Dadhalye - -	On account of planks of an old ceiling, &c., sold to the Nawab, through Merza Allee Begand, head carpenter, Pranvullut.	160 – –	21 – –	- - -	- - -	- - -	*Vide* Remark at No. 3.
15	Davodjee Kekabaree - -	Timber sold to the Nawab - - - -	33 – –	- - -	- - -	- - -	- - -	- - Ditto.
16	Doraljee Franjee - - -	On account of different articles sent from Bombay to the Nawab, as per two Guzeerattee accounts, &c.	776 12 7	76 3 2	852 15 9	810 15 –	42 – 9	In a letter from petitioner to the Nawab, dated 14 September 1842, the sum of *Rs.* 810. 15. is specified as due to him; as this agrees with the Nawab's account, it is allowed.
17	Mooljivand Bhowanee, sons of Ramjee.	On account of a debt transferred by Bhugrandon Brizvullubbdass, to whom the Nawab owed the amount.	425 – –	54 3 –	479 3 –	425 – –	54 3 –	*Vide* Remark at No. 3.
18	Tegniub Roopchund - - -	Balance on account of a pair of Cashmere shawls and spectacles sold to the Nawab.	56 – –	7 8 –	63 8 –	56 – –	7 8 –	- - Ditto.
19	Adumjee Hussonbheree - -	Ditto on account of kin kob sold to the Nawab.	153 – –	19 8 –	172 8 –	153 – –	19 8 –	- - Ditto.
20	Bhaee Sunkee Nurberam - -	Balance on account of precious stones sold to the Nawab by the father of claimant and himself.	4,081 3 2	736 – –	4,817 3 2	4,081 – –	736 3 2	A sum of *Rs.* 3,006. 1. is due by the Nawab's accounts, also *Rs.* 175 on account of an old debt in Abdoola Beg's time, as proved by a paper found among the Nawab's records. These sums are therefore allowed, being for articles supplied. Interest disallowed.
21	Baber Rutonjee - - -	Balance on account of grass supplied to the Nawab.	1,447 11 –	- - -	1,447 11 –	1,446 13 –	– 14 –	*Vide* Remark No. 3.
22	Keekabahee Govindass - -	Ditto on account of grain and oil - -	447 2 8	121 – –	568 2 6	447 2 3	121 – 3	- - Ditto.
23	Kasumallee Alleemohomed -	Ditto on account of glass ware, and sundry articles.	142 11 –	21 – –	163 11 –	142 11 –	21 – –	- Ditto.
24	Sakurchund Harruckekund -	Ditto on account of mashroo (kind of silk cloth).	16 – –	2 2 –	18 2 –	18 – –	2 2 –	- - Ditto.
25	Ebranjee Jeeva - - -	Ditto on account of the value of glass ware -	641 – –	88 5 –	729 5 –	641 – –	88 5 –	- - ditto.
26	Mahomed Kassum - - - Mahomed Jumal - - -	Ditto on account of silk supplied to the Nawab, and his labour.	103 10 6	14 – –	117 10 6	103 10 6	14 – –	- - Ditto.
27	Bhugwandass Brizvullubdass -	Ditto on account of kin kob and hunnos -	1,189 10 –	151 12 –	1,341 6 –	1,187 2 –	154 4 –	- - Ditto.
28	Kerjeewandass Soonderdass -	Ditto on account of the value of satin and broad cloth.	63 10 10	8 8 –	72 2 10	61 11 –	10 7 10	- - Ditto.
29	Isabahee Ebutbhaee - -	Ditto on account of articles of brass, &c. -	30 – 3	5 6 6	35 6 9	30 – 3	5 6 6	- - Ditto.

30	Merwanjee Bhaja - - -	Balance on account of the value of sundry goods supplied from the 10th May 1835, through Abdoolah Beg, and from 4th June 1835 to 31st June 1838, through Meerza Mahomed Allee Beg.	894 13 6	623 4 -	1,518 1 6	894 14 -	623 3 6	This sum does not appear due by the Nawab's accounts, but from the evidence of Meerza Mahomed Allee Beg and Mohunlall, it is proved that *Rs.* 323. 6. have been due since the time of Abdoola Beg, and *Rs.* 775. 4. on account of a pair of chandeliers purchased through Meerza Mahomed Allee Beg. Total *Rs.* 1,098. 10. From this, *Rs.* 203. 12. have to be deducted, owing to the Nawab by petitioner on account of the rent of a piece of land in Attwa village, leaving *Rs.* 894. 14. due to him, which is allowed. Being for articles supplied, interest is disallowed.
31	Daoodbhaee Shurruj Allee -	Value of a piece of silk damask, sold to the Nawab through Meerza Mahomed Allee Beg.	83 7 -	7 4 -	60 11 -	53 7 -	7 - 4	*Vide* Remark at No. 3.
32	Gungadass and Tappeedass, sons of Vassundass Munuckdass.	Balance on account of piece goods - -	1,227 3 -	165 6 -	1,392 9 -	1,227 3 -	165 6 -	- - Ditto.
33	Annundchund Oodeychund -	Ditto on account of money borrowed from the father of petitioner, named Oodychund, by Meer Afzoolooden, previous to his succession to the office of Nawab.	627 - -	909 - -	1,536 - -	- - -	1,536 - -	Original claim upon three notes 1,734 rupees; on the first and second notes *Rs.* 1,453. 8., endorsed as paid; 39 years have elapsed since the receipt of last instalment; no proof to show that the Nawab had in that time recognised the debt, or that petitioner had ever preferred a claim for the balance. The claim is therefore disallowed.
34	Mootajee Ebramjee - - -	Balance on account of woods and cow dung cakes sold to the Nawab.	40 - -	15 - -	55 - -	36 - -	19 - -	Eighty-one rupees appears by the Nawab's account to be due; but 45 rupees have to be deducted on account of house rent due to the Nawab. Balance allowed, 36 rupees. Interest disallowed.
35	Rajaram and Khorsal, sons of Vittindass.	Ditto on account of gold and silver lace -	86 8 3	9 8 -	96 - 3	56 8 -	39 8 3	By the Nawab's account, *Rs.* 58. 8. 3. appears to be due. In explanation of the additional amount claimed, petitioner says he subsequently supplied other articles, but he cannot prove their delivery. The amount above mentioned is therefore allowed, being for articles furnished. Interest disallowed.
36	Vujechund Jewabhaee - -	A sum of money borrowed by Meer Nussumroodeen Khan, father of the Nawab, from Dagabhaee Lallbhaee, on a note of hand, dated in the year Sumvut 1877, A. D. 1819–20, for 1,500 rupees.	1,500 - -	9,181 5 7	10,681 5 7	- - -	10,681 5 7	No proof adduced to show this claim was ever preferred during the lifetime of the late Nawab, or that he ever acknowledged the debt. It is therefore disallowed.
37	Sewlall Madhowdass - -	Printing and hiring of labourers - - -	75 2 -	- - -	75 2 -	25 2 -	50 - -	Twenty-five rupees appears to be due by a reference to the Nawab's dufter, therefore allowed. 50 rupees are claimed on the grounds that the Nawab promised the petitioner that amount as a reward, but no proof was adduced in support of the assertion. This part of the claim is rejected.
38	Myajan Hubbeeboollah - -	Balance of a suma duskut, for Cashmere shawls sold to the Nawab.	42 8 -	7 10 5	50 2 5	40 2 8	7 10 5	*Vide* Remark at No. 3.
39	Vulee Mahomed Sheek Mahomed.	Ditto on account of Cashmere shawls sold to the Nawab through Meerza Mahomed.	72 3 6	9 8 -	81 11 6	72 3 6	9 8 -	- - Ditto.

(*continued*)

STATEMENT showing the Names of the Creditors of his late Excellency the Nawab of Surat at the time of Decease, &c.—*continued.*

No.	Names of the Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
40	Gawal Gunnes - - - -	Balance on account of wages due to them, also the hire of labourers employed.	315 11 –	- - - -	315 11 –	3 14 9	1 2 –	*Vide* Remark at No. 3.
41	Meerza Mahomed Allee Beg -	Note of hand, dated the 4th January 1841, witnessed by Almaram Kirparam, Mahunlall, and Moturam.	33,923 6 –	8,764 – –	42,687 6 –	12,717 5 –	29,970 1 –	This claim is of a very questionable nature; strong grounds of suspicion exist that the note of hand was improperly obtained. An inquiry was instituted into the origin of the debt, and various items rejected as fraudulent; remainder admitted without interest; bond, indeed, does not bear interest. A sum of 1,447 rupees not included in the bond rejected, as no proof is adduced that the Nawab sanctioned the transaction.
42	Khassumbhaee Khuneembhaee -	Balance on account of timbers, bamboos, and rafter supplied to the Nawab.	3,535 7 3	633 12 6	4,169 4 9	3,546 1 6	623 3 3	*Vide* Remark at No. 3.
43	Dessery Nagun Rham Bhaee -	Balance on account of grass supplied to the Nawab, from 16th December 1841 to 16th May 1842.	393 5 3	- - - -	393 5 3	305 5 6	87 15 9	- - Ditto.
44	Fuzulkhan Esubkhan - -	Balance on account of timber and gravel sold to the Nawab.	242 4 –	43 9 9	285 13 9	442 – –	43 13 9	- - Ditto.
45	Ali Biludram - - - -	Balance on account of ceiling sold to the Nawab, through Meerza Mahomed Allee Beg, Maistree Prawallub.	132 4 –	- - -	132 4 –	132 4 –	- - -	Fifty rupees due to this claimant by the Nawab's accounts; proofs having also been adduced of the validity of the larger amount, the claim is allowed.
46	Tapredass Purshelundass - -	Balance on account of bamboos supplied to the Nawab.	64 8 –	9 4 –	73 12 –	64 8 –	9 4 –	*Vide* Remark at No. 3.
47	Kissumbhaee Dossabhaee - -	Balance on account of piece goods sold to the Nawab.	33 – –	4 11 2	37 11 2	23 – –	4 11 2	- - Ditto.
48	Seedee Eyakoob - - -	The value of handkerchiefs, screws, and China cups, sold to the Nawab through Meerza Mahomed Allee Beg.	22 4 7	4 4 –	26 8 7	- - -	26 8 7	No mention is made of this debt in the Nawab's accounts, nor can claimant prove the delivery of the goods. It is therefore disallowed.
49	Sorabjee Jemsetjee - - -	Balance on account of sundry goods sold to the Nawab.	494 12 9	66 12 9	581 9 6	494 12 6	66 13 –	*Vide* Remark at No. 3.
50	Huyatkhan Rehunutkhan - -	Balance on account of three horses sold to the Nawab, through Meerza Mahomed Allee Beg.	300 – –	38 4 –	338 4 –	- - -	338 4 –	The price of these horses is found debited in the Nawab's accounts; claim is therefore disallowed.
51	Dooloobram Russickdass - -	Value of uttor, &c. sold to the Nawab - -	73 2 6	12 – –	85 2 6	73 2 6	12 – –	*Vide* Remark at No. 3.
52	Kavasjee Pestonjee - - -	Value of sundry articles sold to the Nawab.	243 11 –	31 6 4	275 1 4	243 11 –	31 6 4	- - Ditto.
53	Hurrybhaee Bhugteedoss, and Jummadass, manager of the firm of Juggon Sulhis.	Balance on account of broad cloth sold to the Nawab.	283 3 9	49 – –	232 3 9	283 3 9	49 – –	- - Ditto.
54	Syd Hossein Mussloodeen -	Balance on account of subscribing - -	117 11 9	16 12 –	134 7 9	117 11 9	16 12 –	- - Ditto.

55	Savuckram Nathoojee - -	Balance on account of embroidering sundry clothes.	232 2 –	69 – –	301 2 –	232 2 –	69 – –	*Vide* Remark No. 3.
56	Muneer Curon - - - -	Ditto on account of fruits, &c. sold to the Nawab.	125 1 –	17 13 –	142 14 –	111 14 6	31 15 6	- - - Ditto.
57	Soorchund Vujitchund - -	Ditto on account of cloth sold to the Nawab	83 14 –	11 15 –	95 13 –	83 12 –	12 1 –	- - - Ditto.
58	Motterbye Bakurbhaee - -	Ditto on account of varnish, &c. supplied to the Nawab.	458 1 3	65 9 9	523 11 –	435 1 6	88 9 6	- - - Ditto.
59	Hurjeevundass Vurz Choocandass.	Ditto on account of money borrowed by the late Nawab, in a note of hand dated the 1st Moherum 1233, Hizree, A. D. 1816.	188 8 –	7,359 12 –	7,548 4 –	- - -	7,548 4 –	Note of hand originally for *Rs.* 648. 8., 460 rupees endorsed as paid in 1238 Hijree, A.D. 1821. No recognition of debt since that time; it is consequently disallowed.
60	Nunchund Drochund - -	On account of a sum of money borrowed by the Nawab, on a note of hand, dated the 17th June 1842, for 2,500 rupees.	2,600 – –	206 9 8	2,906 9 8	2,766 15 2	139 10 6	No doubt of this claim; it is therefore admitted with interest to the date of petition.
61	Goostajee Jemsetjee - -	Balance on account of wine, &c. to the Nawab.	54 8 –	7 11 –	62 3 –	55 8 –	6 11 –	*Vide* Remark at No. 3.
62	Rhunjeebhaee Munjeebhaee -	Value of sundry articles sold by the father of the petitioners to Meer Nuneenoodeen Khan - - - - - *Rs.* 585 6 Amount of ready cash paid to him 2,168 – *Rs.* 2,753 6 Value of sundry articles sold to the Nawab by his father, *Rs.* 728 – Amount of ready cash as per note - - - 500 – 1,238 – Total *Rs.* 3,991 6	1,188 10 5	38,994 8 1	40,183 2 6	3,000 – –	37,183 2 6	This debt is of very old standing, as may be supposed from the amount of interest claimed; it appears, however, from the evidence of Almooram Dewan, that the late Nawab recognised the justice of petitioners' claim, and ordered 3,000 rupees to be paid to him (vullul tresab, *i. e.* without adjusting accounts), which petitioner agreed to receive in full of all demands, but the money was not paid before the Nawab's death; this sum is therefore allowed.
63	Kevieechund Premchund - -	Balance on account of pearls and ornaments of precious stones sold to the Nawab from Sumont 1895 to 1898.	512 2 –	72 12 –	584 15 –	522 3 –	62 12 –	*Vide* Remark at No. 3.
64	Hussonalee Jenoodeen - -	Ditto on account of gunpowder supplied to to the Nawab.	43 10 –	5 9 9	49 3 9	43 10 –	5 9 9	- - - Ditto.
65	Husson Kolee, Brickmaker -	Ditto on account of bricks supplied to the Nawab.	870 7 3	123 8 –	993 15 3	537 10 –	456 5 3	This claim is not entered in the Nawab's accounts, but from a memorandum found in his dufter it appears that bricks to the value of *Rs.* 527. 10. were received; this sum is therefore allowed.
66	Permanund Sepoy - - -	The value of cloth sold to the Nawab - -	6 8 –	- - -	6 4 –	6 4 –	– 4 –	This claim is not traceable in the accounts, but, from inquiry, it appears to be valid; it is therefore allowed.
67	Jehram Kurjewundass - -	Balance on account of gold thread, &c., sold to Nawab.	400 – –	57 – –	457 – –	400 – –	57 – –	*Vide* Remark, No. 3.

(*continued*)

STATEMENT showing the Names of the Creditors of his late Excellency the Nawab of Surat at the time of Decease, &c.—*continued.*

No.	Names of the Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
68	Purag Chetah - - - -	Hire of six women labourers employed at Lallwardee in the possession of Meerza Mahomed Allee Beg.	19 1 6	- - -	19 1 6	- - -	19 1 6	As claimant was employed by Meerzee Mahomed Allee Beg on his own premises, he is referred to him for payment in the absence of proof that the Nawab authorised such charges.
69	Moorar Hurribhaee - - -	Ditto, on account of the hire of carpenters and surveyors.	106 8 -	- 8 -	106 8 -	102 14 -	2 10 -	By a reference to the Nawab's dufter, *Rs.* 102. 14. appears to be due to the claimant, which is ordered to be paid.
70	Ramdass Huwabhaee - -	Ditto, on account of gold thread and lace sold to the Nawab.	201 14 -	28 - -	230 6 -	201 - -	29 6 -	This is a debt of the time of Meerza Abdoola Begu, former karbaree of the Nawab. It is not mentioned in the Nawab's accounts. But from a statement found among the records, the sum of *Rs.* 201. 14. 6. appears to be due, which is accordingly allowed.
71	Visram Kullian - - -	Hire of labourers employed at Muggena Beg	19 7 9	- - -	19 7 9	18 10 -	- 13 9	By a reference to the Nawab's dufter, the sum claimed appears due, and is therefore allowed.
72	Kanjee Heera - - - -	Ditto in the construction of the house of Meerza Mahomed Allee Beg.	32 12 6	- - -	32 13 6	- - -	32 13 6	*Vide* Remark at No. 68.
73	Puraglahettah - - - -	Ditto of male labourers employed at Lalbaree	72 - -	- 12 -	72 - -	- - -	72 - -	Ditto.
74	Fukeer Gendhur - - -	The value of brass and copper utensils, &c., sold to the Nawab.	82 11 -	11 - -	94 7 -	82 11 -	11 12 -	Ditto, No. 2.
75	Keerparam Pramullub - -	Ditto of carpenters and surveyors employed at the house of Meerza Mahomed Alee Beg at the palace.	800 - -	- - -	800 - -	500 - -	300 - -	Of the amount here claimed, it appears that 500 rupees are due on account of the workmen employed at the Nawab's palace, this amount is therefore allowed. The remainder, on account of workmen employed by Meerza Mahomed Allee Beg at his own residence, is disallowed.
76	Khasumbhaee Vahed Khan -	Balance on account of timber and bamboo supplied to the Nawab.	87 10 10	- - -	87 10 10	87 10 10	- - -	*Vide* Remark at No 3.
77	Purshotum Shunker - -	The hire of labourers employed at Lalbare -	105 2 -	- - -	105 2 -	- - -	105 2 -	Ditto, No. 6.
78	Kavoorjee Ruttarjee - - -	Balance on account of wine and other Europe goods supplied to the Nawab.	207 5 3	30 11 -	310 - 3	267 5 -	42 11 3	Ditto, No. 3.
79	Meer Akburalee Khan Sahib -	To release a sum of money which the Nawab appropriated after the death of Nujeeboolmesser Begum, his daughter, who was married to the petitioner, on the ground that it belonged to him, as his wife had bestowed everything she possessed on him in her lifetime, and that the money in question was taken by the Nawab only as a loan.	3,480 8 -	- - -	3,480 8 -	- - -	3,480 8 -	No evidence is adduced to show that the Nawab regarded the transaction in the light of a loan; he took it undoubtedly in the exercise of the unlimited authority over his family which he possessed, and now that he is dead, it cannot be questioned. The petitioner has also failed to prove that his wife had bestowed the whole of her property on him, as alleged, in her lifetime; his claim is therefore rejected.

80	Jadow Hurrickjee - - -	The value of brick sold to the Nawab - -	203 1 9	28 14 10	232 - 7	203 1 9	28 14 10	*Vide* No. 3. The claimant having died, the amount to be paid to his heirs, on the production of the usual certificate.
81	Ramjee Purbhoor - - -	The value of cow dung cakes, and coarse chunam, &c. sold to the Nawab.	140 - -	20 - -	160 - -	140 - -	20 - -	*Vide* Remark, at No. 3.
82	Joeta Bhugwan - - -	The value on account of bricks sold to the Nawab.	295 12 3	42 2 10	337 15 1	100 1 -	237 14 1	- - ditto.
83	Meerza, Esinbey, and others -	Balance of a sum due on account of a dinner to the European gentlemen of the station by the late Nawab, given by contract.	279 3 6	- - -	279 3 6	- - -	279 3 6	The claim was disallowed by the Nawab during his life, as appears from a statement of the karbaree Abdoola Beg, found in the dufter. It is now consequently rejected.
84	Pestonjee Koskajee - - -	Compensation on account of the rent of a garden, which the Nawab gave to the petitioner, in exchange for one which belonged to him, but which was not made over to him.	307 8 -	842 8 -	1,150 - -	- - -	1,150 - -	The claim originated in Sumout 1882, A. D. 1824–5, since which time there has been no recognition of the debt. Petitioner is also unable to produce documentary or other evidence in support of it, consequently it is rejected.
85	Jumnadass Gordhundass - -	Amount borrowed from Murcharam Bhaee, by the late Nawab, on a note of hand dated 1st June 1842, in security whereof he made over the deeds of Cotyadra; also a further sum of 5,000 rupees taken by the Nawab on the 17th November 1842, on the same security.	35,000 - -	5,664 1 6	40,664 1 6	40,664 1 6	- - -	There is no doubt of the validity of this bond, consequently the claim allowed, with interest to the date of petition.
86	Husson Alee Bucksabhaee -	Balance on account of iron materials and cove ropes, &c. supplied to the late Nawab.	1,025 10 -	144 9 5	1,170 3 5	841 12 3	328 7 -	*Vide* Remark at No. .
87	Penbahee Akulbhaee - -	Balance of his demand for dying cloths -	75 - 9	10 12 -	85 12 9	74 11 6	11 1 3	- - ditto.
88	Whittal Bhica and Geva, gardeners.	The value of flowers supplied to the Nawab -	340 9 6	45 - -	385 9 6	210 9 6	175 - -	*Rs.* 340. 10. 6. due by the Nawab's accounts, 130 owing by the petitioner on account of rent of garden to be deducted.
89	Whittal Bhica, gardener - -	Balance on account of flowers supplied to the Nawab.	202 8 -	- - -	202 8 -	- - -	202 8 -	Nothing appears due to this claimant by the Nawab's account, nor can he prove his claim. It is therefore disallowed.
90	Luckmedass Narrain - -	Transfer of a claim due to him by Faze Mahomed, admitted by the Nawab.	100 - -	14 10 -	114 10 -	100 - -	14 10 -	Proved and admitted.
91	Bhaeemeed Abuboolah - -	Transfer on account of fine chunam supplied to the Nawab.	110 10 9	15 12 -	126 6 9	110 10 9	15 12 -	*Vide* Remark at No. 3.
92	Ruttingee Rustonjee - - -	Transfer on account of elicha (a kind of silk stuff) supplied to the Nawab.	47 13 -	6 13 5	54 10 5	47 13 -	6 13 5	- - ditto.
93	Bajunjee Hornusjee - - -	The value of looking glass supplied to the Nawab.	20 - -	3 - -	23 - -	20 - -	3 - -	- - ditto.
94	Jevun Motta - - - -	His own hire and that of labourers under him for 60 days.	22 8 -	- - -	22 8 -	22 8 -	- - -	Proved to be due by the Nawab's records.

(*continued*)

STATEMENT showing the Names of the Creditors of his late Excellency the Nawab of Surat, at the time of Decease, &c.—*continued.*

No.	Names of Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
95	Moolchund Nathoo - - -	Balance on account of lace of supper (a kind of golden threaded cloth) supplied to the Nawab.	515 12 –	73 10 –	589 6 –	515 12 6	73 9 6	*Vide* Remark at No. 3.
96	Seendy Abdoolah Hoosein -	Ditto on account of piece goods sold to the Nawab.	280 2 6	40 – –	320 2 6	280 7 –	39 11 6	Ditto.
97	Shaik Moorad Saik Rasool -	Ditto on account of chandeliers sold by his father to the Nawab.	177 12 –	- - -	177 12 –	177 12 –	- - -	Ditto.
98	Kassumbhaee Oornulbaees -	The value of omendils and dooputta sold to the Nawab by his father.	240 – –	34 3 3	274 3 3	200 – –	74 3 3	The items not entered in the Nawab's accounts, but being proved by a reference to his records of the time of Abdoola Beejet, is allowed.
99	Bugwan Bajee - - - -	Ditto on account of timber purchased by Nawab.	73 12 –	- - -	73 12 –	73 12 –	- - -	*Vide* Remark at No. 3.
100	Munoredass Hurribhaee - -	Balance on account of dyeing cloths - -	46 6 9	6 8 –	54 14 9	46 6 9	6 8 –	Ditto.
101	Shapoorjee Cooverjee - -	Ditto of pickle sold to the Nawab - -	34 8 –	4 12 –	39 4 –	- - -	39 4 –	No notice of this claim found in the Nawab's records, being of very old standing it is disallowed.
102	Bhicia Joyce - - - -	Ditto of hire of labourers - - - -	49 8 –	- - -	49 8 –	49 8 –	- - -	Proved by the Nawab's records.
103	Ada Saduck Alee - - -	Ditto of glass drops and hooka bottoms, &c. sold to the Nawab.	29 2 –	4 2 –	33 4 –	23 2 –	10 2 –	*Vide* Remark at No. 3.
104	Hurjee Kullian - - -	The value of bricks supplied to the Nawab -	25 9 3	3 9 –	29 2 3	25 9 3	3 9 –	Ditto, No. 2.
105	Vundravum Khooshall - -	The value of a piece of long cloth sold to the Nawab.	9 4 –	- - -	9 4 –	9 4 –	- - -	Ditto, No. 3.
106	Bowjee Purbhoo - - -	Loss in consequence of the Nawab resuming the possession of a certain garden farmed out to petitioner previous to the expiration of his lease.	1,918 14 –	1,918 14 –	3,837 12 –	- - -	3,837 12 –	This claim was the subject of a correspondence with Government; last letter from Government dated 11 December 1830. The claim of very long standing. It now appears to have been recognised by the Nawab, consequently disallowed.
107	Ulaf Beg, fire-work maker -	Balance on account of fire-work supplied to the Nawab.	24 3 9	3 8 –	27 11 9	24 3 9	3 8 –	*Vide* Remark at No. 3.
108	Koobere Kessoojee - - -	Ditto on account of bricks supplied to the Nawab.	81 2 9	11 10 –	92 12 9	81 2 9	11 10 –	Ditto.
109	Uchameya Sumsoodien - -	Ditto of pinges, whamposh, &c. sold to the Nawab.	48 – –	- - -	48 – –	48 – –	- - -	No mention is made of this claim in the Nawab's accounts, but the delivery of the goods having been proved it is allowed.

110	Kullianjee Kussonjee - -	Ditto wages of labourers employed in cutting grass; also his wages.	33 3 6	- - -	33 3 6	8 3 6	25 - -	*Vide* Remark at No. 3.
111	Hurryvallab and Bhuggoo, sons of Luckmeedass.	Ditto on account of ghaee sold to the Nawab.	3,110 3 6	2,612 8 -	5,722 11 6	1,885 - -	3,837 11 6	- - Ditto.
112	Rustongee Kavasjee - - -	Ditto of liquor sold to the Nawab - -	49 2 -	7 2 -	56 4 -	47 4 -	9 - -	- - Ditto.
113	Bhuganbhaee Doolubdass - -	Balance on account of piece good sold to the Nawab.	60 3 -	8 8 -	68 11 -	60 3 -	8 8 -	- - Ditto.
114	Hurkee Hurree - - -	Bricks supplied to the Nawab - - -	1,060 6 6	151 1 6	1,211 8 -	1,005 4 -	206 4 -	Proved by the Nawab's records to the extent allowed.
115	Pranjeewundass Nurshydass -	Amount of a note passed on the 6th August by the Nawab for 2,500 rupees, also another item of 500 rupees paid to Jaffuralee, on a note of hand, dated 8th August 1842.	3,000 - -	425 - -	3,425 - -	- - -	3,425 - -	The transaction on which the note of hand for 2,500 rupees was passed appearing of a doubtful nature, the claim is therefore disallowed, unless petitioner and Purshotundass can distinctly prove that the sum in question was paid, in which case the amount is admitted. The claim for 500 rupees paid to Meer Jafur Allee is rejected, as the Nawab's estate is not responsible for his debts.
116	Meer Mooeenoodeen Khan Buckshee, of Surat.	Claims on account of certain notes as follows: A note, dated 11th of Shawul 1209, Hijree, bearing the seal of Kumroodowla, to the effect that 4,000 rupees should be paid into the Custom House of the Company through his (the Buckshee's) medium by the firm of Bhunsalee. A note, dated 26th of Suffer 1209, Hizree, passed by Nawab (name unknown) for the sum of 50,000 rupees, received as a loan through the managers of Suffdooroo Dowlah Bkhadur. A note, bearing the seal of Caimoodowlah, dated 7th Shaban 1209, for the sum of 12,000 rupees, paid by his desire to Hajee Mooftar, from Swears, through the management of Sufdurs Dowla Bahadoor. A note passed by Meer Nusseerooddien Khan Bahadoor, dated 5 Suffer 1210, Hijree, to the Surcar of Suffdwoodowla, for the sum of 1,500 rupees, borrowed without interest. A note, bearing the seal of Caimoodowla, dated 27 Rjub 1211, Hizree, passed to (no name mentioned) for 69,000 rupees, borrowed under a promise to pay every month 1,800 rupees, without interest.	93,543 - -	- - -	93,543 - -	- - -	93,543 - -	These notes were passed as far back as A.H. 1209 and 1211, upwards of 50 years ago, several years before Surat was ceded to the British Government. They appear never to have been recognised in all that time, either by the late Nawab or his predecessors, by the payment of interest, or in any way. As it is quite impossible at this distance of time to ascertain the circumstances under which the debt was incurred, the claim is disallowed.
117	Russickbhaee Gudhurbhaee, manager of the firm of Samulbhaee.	Claims on account of Kink kob sold to the Nawab.	2,851 12 -	4,179 11 -	7,031 7 -	1,229 10 -	5,801 13 -	The greater part of this claim, which is of old standing, appears on inquiry to have been settled; remainder is proved by the Nawab's accounts. Allowed.
118	Dulputram and Kirparaw - -	On account of the management of a garden called Fez Elahee, entrusted to their father Gokuldass, by Meer Ufzoolooddein Khan, before he succeeded to the office of Nawab.	529 7 6	4,884 1 -	5,413 8 6	- - -	5,413 8 6	This claim is upwards of 20 years' standing; no mention is made of it in the Nawab's accounts, nor can the petitioner produce any vouchers upon which reliance can be placed in support of it. It is therefore disallowed. (*continued*)

STATEMENT showing the Names of the Creditors of his late Excellency the Nawab of Surat at the time of Decease, &c.—*continued.*

No.	Names of the Claimants.	Nature of the Claims.	Principal Amount.	Interest, &c.	TOTAL.	Amount Allowed.	Amount Disallowed.	REMARKS.
			Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	
119	Bace Premcoover - - -	Balance on account of a pair of Cashmere shawls, sold for 125 rupees; also the amount of 1,228 rupees, paid to Jumnadass Ramdasson on account of the Nawab, with interest.	771 8 –	1,078 8 –	1,850 – –	919 8 6	930 7 6	The firm to which petitioner belongs had become security for the Nawab for the payment of a debt of 1,228 rupees, to a person named Jumnadass, which they were obliged to pay to the extent of *Rs.* 794. 8. 6., under a decree of the Adalut. She now claims from the Nawab's estate payment of the original debt to Jumnadass, with interest; but as the amount of the decree is all that can be properly claimed that amount is allowed. The sum of 125 rupees, claimed for shawls, is also admitted, if found entered in the petitioner's shop books, which being under attachment, cannot now be produced.
120	Sorabjee Byramjee - - -	The value of fruit supplied - - - -	572 2 3	- - -	572 2 3	- - -	572 3 3	A counter claim has been brought forward against this petitioner for the rent of gardens farmed to him by the Nawab, amounting to *Rs.* 991. 8. The sum, 777 rupees, appears to have been the value of fruit supplied, instead of the amount claimed; this leaving *Rs.* 214. 8. still due by the petitioner. Being in poor circumstances, 100 rupees of this is remitted, and the remainder, *Rs.* 114. 8., ordered to be collected for the benefit of the Nawab's estate.
121	Shaik Rajee Rdosal - - -	Ditto of firewood supplied by father of petitioner to the Nawab on the occasion of the marriage of his (the Nawab's) daughters.	650 – –	- - -	650 – –	646 13 –	3 3 –	This sum allowed appears due by a reference to the Nawab's record.
122	Manuckjee Temoorjee - -	Ditto on account of cloth supplied - -	76 4 –	10 12 –	87 – –	- - -	87 – –	No mention is made of this claim in the Nawab's accounts; plaintiff has also neglected to appear; it is consequently disallowed.
123	Scolall Bhaeechund - - -	Ditto on account of brass utensils - -	76 4 –	10 12 –	87 – –	87 – –	- - -	This claim is not entered in the Nawab's accounts; but petitioner having proved delivery of the goods, it is allowed.
124	Juggoo Juggannath - - -	Ditto of brass sold to the Nawab - -	39 1 3	5 12 –	44 13 3	37 1 3	7 12 –	*Vide* Remark at No. 3.
125	Mahomed Alee Mahomed Hoossein.	Balance on account of two (mundills) turbans sold to the Nawab.	34 – –	- - -	34 – –	20 – –	14 – –	Proved to be due by the evidence of Mohunlall and Meerza Mahomed Alee Beg to the extent admitted.
126	Roopchund Nundlall - -	The value of brass sold to the Nawab - -	26 5 6	3 9 –	29 14 6	26 5 6	3 9 –	*Vide* Remark at No. 3.

127	Shurefa Tahera, wife of Nakooda	Value of a share of the village of Contyadid, purchased by the Nawab from relations of petitioner's sister's husband without her consent.	5,401	–	–	–	–	–	5,401	–	–	–	–	–	5,401	–	–	This claim is disallowed, as the relations of petitioner's sister's husband, who sold the village in question in which she had an interest without her consent, are the parties who should be sued, and not the Nawab, who paid the full value for it. Besides, no proof is adduced to show that her sisters were in possession of any share of the village at the time of its sale, or had ever any interest in it, and unless her husband's relations were a party in the case, this cannot properly be ascertained.
128	Futtey Allee Furjajallie	Amount of debt due by Ziaoobnessa Begum, the mother of the late Nawab, on two notes of hand, passed in 1842, in favour of petitioner's claims against the Nawab as his mother's heir.	14,776	–	–	–	–	–	14,776	–	–	–	–	–	14,776	–	–	The mother of the Nawab, who is said to have passed three notes, died A. D. 1827; since which time no claim has been advanced for the amount of them, nor has the Nawab in any way recognised the debt. The claims, therefore, disallowed.
129	Mahomed Hafiz Mahomed Hassim.	The amount of his labour	129	4	–	–	–	–	129	4	–	–	–	–	129	4	–	No proof is forthcoming in support of this claim, which also was not brought forward till after the time prescribed by the Government Proclamation. It is consequently disallowed.
130	Kussondass and Narrondass, sons of Muckundass.	The amount of retrenchment made from the pay of the Nawab's followers on account of a debt due by them to the father of petitioner while he held the office of Dewan.	1,516	5	9	–	–	–	1,516	5	9	–	–	–	1,516	5	9	No mention is made of this claim in the Nawab's accounts, nor has petitioner any vouchers to prove it; therefore allowed.
131	Futchalee Fayajalee	Arrears of certain allowances granted to him by the Nawab and his mother under a written engagement, which were subsequently withheld; claims also the permanent continuance of the allowance stipulated.	7,232	8	–	–	–	–	7,232	8	–	–	–	–	7,232	8	–	The claim appears to have originated about 18 years ago, and never to have been before advanced. The same authority which promised the allowances in question had, of course, the power to withhold them. The petitioner's right is therefore disallowed.
132	Noorbhaee Cooverjee	The value of hay supplied to the Nawab	200	–	–	–	–	–	200	–	–	–	–	–	200	–	–	No mention is made of this claim in the Nawab's accounts, and as petitioner has no vouchers to prove it, it is disallowed.
133	Muttoonadass Goverchundass	The value of grass and firewood purchased for the use of the Nawab's sircar by their grandfather Trehooeendass, as per memorandum of debts due to different people given in to the Nawab at the time he was discharged his service.	4,329	8	6	4,239	8	6	8,479	1	–	–	–	–	8,479	1	–	This claim of old standing, which does not seem to have been before advanced. There is nothing said of it in the Nowab's accounts, and as plaintiff cannot substantiate the payments made by his father, it is of course disallowed.
134	Duyaram Koobais	Workmanship	104	8	–	–	–	–	104	8	–	85	14	–	18	10	–	Proved by evidence, and admitted.
135	Nowrowjee Dorabjee and Ardesur, sons of Jumsetjee.	The amount of a note passed by the Nawab, Camoordowla, in the year 1195, Hizree, A. D. 1778.	44,139	3	3	–	–	–	44,139	3	3	–	–	–	44,139	3	3	This claim originated in a note of hand, which bears date about 67 years ago, during which period the debt does not appear to have been recognised. It is therefore disallowed.
136	Lalla Khooshall Bhaistee	Wages for having supplied water at the buildings of the new Mehah.	14	4	–	3	10	–	17	14	–	–	–	–	17	14	–	This claim appears to have been settled in the lifetime of the Nawab, and is now therefore rejected.
		TOTAL RUPEES	3,19,511	13	5	1,00,852	7	4	4,20,364	4	9	1,15,511	2	8	3,04,852	2	1	

Baroda, 3 November 1845.

(signed) *R. H. Arbuthnot*,
Late Agent for the Honourable the Governor at Surat.

3 May 1856.

No. 33.

(No. 7,475.)

MINUTE by the Honourable Mr. *Willoughby*, dated 12 August 1846.

12 August 1846. I BEG to submit a few observations on the draft letters circulated for approval, containing the instructions of Government on Sir Robert Arbuthnot's Report of the 3d November 1845, on the affairs of the late Nawab of Surat, and assigning pensions to his relatives and dependants.

2. Sir Robert Arbuthnot's proposed distribution of the Nawab's property is to be referred, through the Judges of the Sudder Dewanee Adawlut, for the opinion of the law officers of that court.

3. This is a wise precaution, but a doubt occurs to me whether the Government is competent authoritatively to decide on the complicated claims to participate in this estate, and whether, if it does so, its decisions may not hereafter be successfully resisted by any dissatisfied party in our courts of law.

4. There can be no doubt that, in some respects, it is highly desirable that the affairs of the late Nawab should be arranged by Government rather than by a court of law, and perhaps the power to do so might be conferred by an addition to the legislative enactment we are about to apply for, and referred to in para. 13 of the draft letter.

5. With reference to para. 4, ordering the discontinuance of the fees appertaining to the office of Wakayanavees, now obsolete, I would suggest that we should first call on the agent to submit a statement, showing in detail the nature and amount of these fees and from whom collected. I do not myself see why the amount of these fees collected between the 8th August 1842, the date of the Nawab's death, and the 1st October 1844, the date of passing Act XIX. of 1844, should be refunded, for they only became illegal by the passing of that Act; and the amount intermediately collected should, I think, be credited to Government.

6. With regard to the Mooglaee hucks also, I think Government would act more prudently by deferring to record a positive opinion as to whether they are public or private property, until the information called for in para. 8 of this letter is received.

7. I have no remarks to offer on the pensions to be assigned to the late Nawab's relations, except that they are exceedingly liberal, though not more so than is warranted by the instructions of the Honourable Court of Directors, in their despatches, dated 21st August and 4th September, Nos. 22 & 24 of 1844.

8. I find that these pensions and allowances aggregate 53,700 rupees per annum, and that they are granted in arrears from the date of the Nawab's death, and are exclusive of his private property, which is considerable. I would suggest that, with the view of obviating future dispute, the issue of orders for payment of the pensions be delayed until they have been accepted by the parties interested.

Also exclusive of special grants on account of funeral and other expenses.

9. Liberal, however, as these pensions are, I am disposed to think that one branch of the Nawab's family has been overlooked. I refer to Meer Moveenodeen Khan, commonly called the Buckshy of Surat.

10. I am aware that the Buckshy's family is distinct from that of the Nawab, and that, under the late Mr. Duncan's arrangements at Surat, in 1800, a separate provision was assigned for their support, which they still receive.

11. But there can be no doubt, that had it been determined to maintain the title and dignity of Nawab of Surat, the Buckshy's claim to succeed would have been far superior to that of any other member of the late Nawab's family. There is in short no flaw in his escutcheon, which cannot be asserted of those who claim through the Nawab's daughter, whose legitimacy is, I conceive, more than doubtful.

12. On

12. On these grounds, and in consideration of the pecuniary distress in which the Buckshy is involved, as indicated in a late despatch from the Agent at Surat, now under our consideration, I should be glad if the Board concur in opinion with me, that we may recommend to the Honourable Court of Directors that a life pension, say of 12,000 rupees per annum, be granted to the Buskshy, out of the lapsed stipend formerly paid to the Nawab of Surat.

This question has been generally named by Government; but for the grounds of my opinion on the subject, I beg to refer to paras. 3, 4, 9, and 12 of a letter from the Agent for the Honourable the Government of Surat, dated the 28th August 1842, and to an extract from the late Governor S. G. Arthur's Minute of the 10th April 1843, both of which, for the convenience of reference, I annex to this Minute.

12 Aug. 1846. (signed) *J. P. Willoughby.*

Extract (Pars. 3, 4, 9, and 12) from a Letter from the Agent for the Honourable the Governor of Surat, dated the 26 August 1842.

Para. 3. His Excellency has left another widow, Mamnanee, alias Umeer ool Nissa Begum, respecting whom I have to speak more in detail, as there is some discordance in the evidence relating to her early history, on which her claim and that of her daughter to a participation in her husband's allowance must very materially depend. In presence of the late Nawab's managers, I examined several persons, whom I supposed to be well acquainted with the domestic transactions of the family, and from their evidence it appeared that this lady when very young fled by night from her home and relations, for reasons which were not stated, and was accidently met by a peon in the service of the late Nawab's father, who seized and delivered her into the hands of an eunuch named Sahel: that on the following morning this person brought her into the presence of the Nawab, who placed her on his son's establishment, as attendant on one of his concubines: that the Nawab lately deceased eventually married her, but not until she had become the mother of three children, of whom one daughter is the sole survivor. Her name will appear in the course of this statement, and she is the only direct heir left by his Excellency. His marriage with this Begum, and with a dancing girl named Dallew, were together celebrated on the 26th Mohurum Hyree 1841, corresponding with 11th of September 1825.

4. Such is the tale of these witnesses (goolams on the establishment), which, if it be depended upon, would decidedly militate against the Begum's claim; but thinking a more minute investigation highly necessary regarding a person who has always enjoyed the rank, and shared the respect due to the principal lady on the establishment (the other widow, Doolum Begum, having been long separated from him), I could not rest satisfied without her own direct statement. With her sanction therefore I repaired to the palace, and with every deference, demanded by her retired habits and peculiar circumstances, I obtained from her own lips the following history of her early life. She belonged to the Rafpool caste, and resided at Bownugger. When about the age of 12 or 13, a stranger came there and purchased her, for what sum she knows not; he conveyed her to the town of Kandia, and afterwards to the residence of the old Nawab, father of his late Excellency. The latter informed his mother that a young girl had been brought to the palace whom he wished to live with him. His proposal having been acceded to by her and his father, Irusserochen Khan, she was given into his keeping. She recollects having heard that the person who brought her, in consideration of the purchase, received 200 rupees and a pair of shawls. Three children were the offspring of this connexion, of whom one alone is alive, namely, a daughter, Buckharool Nissa Begum. After the bismalla of this child (four years four months four days subsequent to its birth) she was married to the Nawab, who passed to her a deed of emancipation.

9. Buckharool Mesa Begum, the daughter of his late Excellency, to whom allusion is made in paragraphs 3 and 4, is about 21 years of age, and was born, as already stated, about four years previously to the marriage of her father and mother, Jununeme. She is married to Meer Jafur Allie, son of Meer Laifar Allie.

10. The satisfactory testimony given to her mother's having been the purchased slave of the Nawab entitles this lady, according to the Mahomedan law,

3 May 1856. to inherit from her father's allowances, at the scale of eight annas in a rupee; but her children may not, during her life, enjoy any share of the provision.

11. She has, however, dared to advance yet more lofty pretensions, having been persuaded that her husband is to inherit the title and dignities of the late Nawab. No sooner was his demise reported, than her father-in-law, Meer Laifar Allie, hastened to Surat, and is now residing in the palace with his son, in order to watch over the interests of his son and daughter-in-law. By his influence she has, I understand, been induced to address the Honourable the Governor on the subject of her husband's pretensions, in a letter that was forwarded to Mr. Morris, secretary in the Persian Department, with Mr. Richardson's communication of the 19th instant.

12. Meer Jaffur Alie is not, however, entitled by the Mahomedan law to any share even of the Nawab's allowances; and it is difficult to understand on what arguments he could possibly found his absurd and ambitious claims to the heritage of his titles.

MINUTE by the Honourable the Governor, dated 8th September 1846.

September 1846. I certainly think, with Mr. Willoughby, that we ought to have an Act to legalise our proceedings, in taking possession of and distributing, according to Mahomedan law, the property of the late Nawab; strictly speaking, perhaps, the Government should on his demise have interfered in no way whatever with any matter unconnected with the question of the continuance of the dignity, and the stipend paid by Government, but this course would evidently have given rise to endless disputes, and to the greatest injustice; and although our interference might not have been justifiable in the case of a private party, however wealthy, or however high in consideration, yet it may have been so when we consider that his Highness had been recognised by us as a sovereign prince, while all the claimants to his property were, at his demise, only ordinary subjects of the British Government.

2. The above view has already been taken in para. 47 of the Minute of the Honourable the late President of the 25th April last, in which I concurred. I may observe that that Minute was prepared in communication with me, and this paragraph was particularly inserted at my suggestion.

3. I do not see any necessity for further investigation into the fees connected with the obsolete office of loaky-a-neuies; the office was purely nominal; that is, no duties were annexed to it. It lapsed to the British Government on the Nawab's death, and from that the levy should have been discontinued. I think the refusal (if the parties entitled to it can be found) from the date of the Nawab's death to that on which Act XIX. of 1844, came into effect, should be made as proposed in para. 5 of the late Honourable President's Minute.

4. The decision (para. 9) that the Mooglaee hucks are private property, was formed irrespectively of the exact nature of those hucks, and I would not delay their recognition as already decided by the Board.

5. I think Mr. Willoughby's suggestion (para. 8), that payment of the pensions be delayed until the parties to whom they have been awarded have formally accepted them, is very judicious, and I willingly concur in it.

6. I cannot think that the claims of the Buckshee to any portion whatever of this lapsed stipend of the late Nawab are strongly founded; I should, however, be glad, considering the respectability, and at the same time the involved condition of the family, if the Honourable Court would allow the grant proposed by Mr. Willoughby of 12,000 rupees per annum to Meer Mooeenoodeen Khan for his life.

(signed) *L. R. Reid.*

From

3 May 1856.

From *A. Malet*, Esq, Secretary to Government, Bombay, to *R. Keays*, Esq., in charge of the office of Agent for the Honourable the Governor, Surat, dated 10th October 1846. 10 October 1846.

Sir,

In reply to Sir Robert Arbuthnot's letter, dated the 3d November last, reporting upon the various claims which have been advanced to the private property of the late Nawab of Surat, and upon the claims of Meer Jaffur Allie, and his children, and other connexions and dependents of the late Nawab, upon the British Government, I am directed by the Honourable the Governor in Council to communicate to you the following observations and instructions.

2. Enclosures marked (A.), Nos. 1 and 8 to the Report, contain Sir Robert Arbuthnot's decisions on the various claims which have been advanced by the relatives of the late Nawab to share inhis p rivate property. These decisions, as also those contained in Enclosure (B.), Nos. 1, 2, 4, 7, 8, 17, and 23, involve points of Mahomedan law, and have therefore been referred to the Judges of the Sudder Adawlut, in order that it may be ascertained whether those decisions are in conformity with Mahomedan law and usage in this part of India.

3. For the reasons advanced by Sir Robert Arbuthnot in his decision on the claims advanced by Meer Jaffur Allie on behalf of his two infant daughters to succeed to the wakya negaree fees, or town duties, and taxes on trades and professions, forming Enclosure to the Report marked (B.) No. 3, the Governor in Council concurs in opinion with that officer, that those rights have, in consequence of the death of the late Nawab, lapsed to Government, and that Meer Jaffur Alli's claim to the continuance of these fees to his two infant daughters is untenable. These fees produced the late Nawab an annual income of about 1,500 rupees. The Nawab collected them in virtue of his holding the office of "Wakaya Negai," or recorder of news, an office which he inherited from his father, on whom it was conferred by the Emperor of Delhi; and this grant was confirmed by Mr. Governor Duncan, when he negotiated the treaty concluded in May 1800 with the late Nawab's father. It appears extremely doubtful whether the late Nawab had any right to succeed to this office, and the fees attached thereto, on the death of his father, and whether on that occasion Government, as successors to the Emperors of Delhi, did not possess the right to resume the fees attached to this office. It is, however, too late now to consider this point, but the Governor in Council is of opinion that Sir Robert Arbuthnot has most clearly shown that this office, with its fees, has now lapsed to the State. This decision is accordingly confirmed by the Honourable the Governor in Council.

4. As suggested by Sir Robert Arbuthnot, the amounts which have been collected on the above account subsequent to the Nawab's death, should be made over to the collector of Surat, and brought to the credit of Government. The collector at Surat and the collector of continental customs and excise have been directed to discontinue for the future the payment of any sums formerly allowed to the late Nawab in part compensation of these hucks. Under this decision, all sums formerly granted by Government in compensation for any portion of these hucks will cease to be paid from the date of his Excellency's death.

5. There is not at present any information before Government in regard to the precise nature of the Mooglaee hucks held by the Nawab, further than what is contained in Sir Robert Arbuthnot's letter, dated the 29th July 1843, in which he states that they are "a small cess on the ryots of several villages "belonging to Government, levied by the officers of the late Nawab direct "from the Pablls." Before the Governor in Council decides whether these hucks are public or private property, it is requisite that full and precise information should be submitted to Government of the circumstances under which this cess is collected, what particular parties are subject to the payment of it, and whether it in any way bears oppressively on the contributors.

6. The Governor in Council is clearly of opinion, that for the reasons mentioned by Sir Robert Arbuthnot, in the Enclosure to his Report, marked B, No. 1, the claim advanced by Cunerool Nissa Begum, one of the widows of the late

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late Nawab, to the wereefa village of "Ootyadia," situated in the Hansole pergunna of the Broach collectorate, is untenable, and it should therefore be disallowed. The collector of Broach has been directed to submit the information in regard to this village, alluded to in the 8th para. of Sir Robert Arbuthnot's Report; and on this information being received, the Governor in Council will decide upon the expediency or otherwise of adopting the suggestion made by Sir Robert Arbuthnot in the following para. of his Report, that Government should purchase the village on its own account.

7. The course recommended by Sir Robert Arbuthnot, in the 10th para., in regard to the five claims alluded to in the margin *, the particulars of which are given in Enclosures marked B, Nos. 10, 11, 14, 15, and 18, appears under the circumstances of each case to be proper, and his suggestions in the whole of these cases are accordingly approved by Government.

8. With reference to Nos. 1 and 2 of these cases, I am desired to observe that there can be no doubt that the late Iveerea Abeloola Beg, formerly manager of the Nawab's affairs, was, from the time he fell under his master's displeasure, subjected to great and unmerited hardship. Justice therefore demands that Government should now afford the widow of Eberea Abdoola Beg, his children, and other members of his family, who up to the time of the Nawab's death appear to have been persecuted by him with an unrelenting hand, in consequence of his deep-rooted antipathy to his former servant, any redress which it may be possible to afford them. Sir Robert Arbuthnot's recommendation of restoring to this family such portion of the property now under sequestration as they may be able satisfactorily to establish was unjustly and unfairly taken from them by the late Nawab, is accordingly sanctioned by Government. In regard to the other portion of Meera Abdoola Beg's property which the Nawab alienated during his own life, the family should be informed that the only course open to them, with the view of endeavouring to obtain its restoration, is by a civil suit.

9. With reference to the 11th and 12th paragraphs of the report, I am desired to inform you that the Judges of Sudder Adawlut and the Advocate-general have, after the fullest consideration, concurred with Government in opinion that the exemption from the jurisdiction of the civil and criminal courts of justice under this Presidency, enjoyed by the relatives and servants of the late Nawab during his life, has ceased from the date of his death, and that the exercise of the right which the Nawab possessed to dispense justice has also become extinct in any but the ordinary courts of justice. These courts must, therefore, henceforth take cognizance of all matters which, during the life of the Nawab and the recognition of his dignity would have been exempted from their jurisdiction.

10. The Judges of the Sudder Adawlut have, however, drawn the attention of Government to the fact that during the lifetime of the late Nawab all contracts, and generally all money transactions entered into by his relations and dependants, were not regulated by the provisions of the Bombay code, since he was not bound, in the exercise of his independent jurisdiction, to administer justice according to its enactments, and that consequently the law of limitation on the time for prosecuting civil actions (Regulation V. of 1827), and the Regulation Acts (Regulation IX. of 1827 and Act I. of 1843) were imperative, and unheeded by those over whom his jurisdiction extended. The immediate application, therefore, of the restrictive provisions of these enactments to persons who, previously exempt from the jurisdiction of the civil and criminal courts, became answerable to the Regulations on the death of the late Nawab, would necessarily prove prejudicial to those whose cause of action was of a date which barred

* 1. Claims advanced by Meerza Esaeea Beg and other heirs of Ilbeese Abeloolee Beg to sundry property belonging to the estate of the late Nawab.
2. Claims advanced by Shead Hameol Beg bin Amen Beg to sundry property now under sequestration, of which he alleges he was unjustly deprived by the late Nawab.
3. Similar claims advanced by Bhug Vundoes Gopoldoss to sundry other property which he alleges was unjustly taken from him by the late Nawab.
4. Claims of Aleha Meeol bin Mahomed Lynd to sundry property now under sequestration.
5. Claims of Eleeah Mahomed to ditto, ditto.

barred the suit from being entertained in the court. The judges have accordingly framed a draft Act providing for this inconvenience, and this subject is now under the consideration of Government. 3 May 1856.

11. The Nawab of Surat died on the 8th August 1842, and his son-in-law, Meer Jaffur Allie, in a letter which he addressed to Sir Robert Arbuthnot, on the 26th February 1844, claimed payment from the Nawab's estate of the sum of *Rs.* 108,439. 10., which he alleges he disbursed from the day following the Nawaub's death up to the 19th February 1844, being a period of 18 months and 11 days, in defraying debts and the funeral expenses of the deceased, and in the maintenance of the Nawab's establishment. This claim is composed of the items mentioned in the margin.* Sir Robert Arbuthnot is of opinion that Meer Jaffur Allie has satisfactorily established that he defrayed *Rs.* 10,438. 4. 3. of the first of these items in liquidating arrears of servants' wages and other pressing claims due by the Nawab at the time of his death. Although Meer Jaffur Allie paid the amount at his own risk, and entirely on his own responsibility, still Sir Robert Arbuthnot is of opinion that this charge shall be admitted, and be paid from the private estate of the Nawab. As Sir Robert Arbuthnot states that he has satisfied himself that this amount (*Rs.* 10,438. 4. 3.) was really paid by Meer Jaffur Allie, the Governor in Council is of opinion that he should be indemnified for this outlay in the mode proposed.

12. The charge of *Rs.* 18,254. 12. 9. made by Jaffur Allie on account of the funeral expenses of the Nawab, forming the second of the above items, has, Sir Robert Arbuthnot is of opinion, been subtantiated to the extent of *Rs.* 17,483. 0. 3., and that the amount is not exorbitant, considering the rank of the deceased, and that this expenditure extended over a period of 12 months, during which it was incumbent on the family to give large entertainments according to the practice of Mahomedans of rank, the Governor in Council accordingly authorised Meer Jaffur Ally being indemnified for this outlay to the extent of *Rs.* 17,483. 0. 3., the amount which he has substantiated to the satisfaction of the late Agent.

13. There can be no doubt that hopes were for some time entertained by the family of the late Nawab, that the stipend of 1 ½ lac of rupees, which he received from the British Government, would be continued to some member of the family who they expected would be recognised as heir to the deceased. In consequence of this expectation, a considerable establishment was kept up by the Meer Jaffur Ally; and the Governor in Council's opinion, that it would operate with harshness on the shares of the personal property of the deceased, especially on those who would not have benefited by the acknowledgment of an heir, that all expense incurred in the maintenance of the Nawaub's household, and on other accounts, should be paid out of that property. The same may be said in respect to the funeral expenses, which doubtless were heavier in consequence of the dignity of the deceased, and the expectation of his family that an heir to his stipend would be recognised by Government.

14. In consideration of these circumstances, the Governor in Council has resolved that a contribution shall be made by Government of the sum of 8,000 rupees towards defraying the financial expenses of the deceased (17,483 rupees), and

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	Rs.	*a.*	*p.*
1. Paid on account of pressing debt of the Nawab	10,533	5	9
2. Funeral expenses of the Nawab	18,254	12	9
3. Paid on account of provisions for the family and dependents of the Nawab	16,450	4	–
4. Servants' wages	44,012	15	3
5. Grass curber, &c.	5,236	6	3
6. Miscellaneous charges	6,654	7	9
Total Rupees	1,01,164	3	9
Interest on the above amount, at 9 per cent. per annum	7,275	6	3
Grand Total *Rs.*	1,08,439	10	–

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and that the balance (9,483 rupees) shall be defrayed from the personal estate.

15. The Governor in Council has further resolved, for the same reasons, that towards the maintenance of the establishment from the 8th August 1842, being the date of the Nawab's death, to the 1st November 1843, when the final decision of the Government of India was promulgated, the expense on which account, with interest, amounts to nearly a lac of rupees, Government shall contribute the sum of 20,000, and also pay to Meer Jafferally the pension which each of the parties who were actually maintained by him are entitled to during that period. The remainder of the expense should be defrayed from the personal estate of the deceased.

16. From the 1st November 1843 to the 1st April 1845, on which latter date commenced the paying of the pensious to the family and dependents of the late Nawab, Meer Jaffarally shall be permited to receive the pensions of those whom he maintained during that period. Each of the pensions should be calculated from the 9th August 1842, the day following the death of the Nawab.

17. The Governor in Council is of opinion that it would be unfair to make the general estate of the Nawab responsible for the payment of the loan of 10,000 rupees, which was advanced to Meer Jafferallee by the Honourable Court on his leaving England. Meer Jafferallee proceeded to England solely for the purpose of advocating his claim to succeed the late Nawab in his dignity and stipend; and it is therefore only proper that he should himself repay this loan out of his own share of the estate, or out of the arrears of pension to be assigned and to his deceased wife Buehlyawohueesa Begum, the only surviving daughter of the Nawab at the time of his death.

18. The next point to be decided is, whether the Bueblyawoheesa Beegum died before Government had pensioned any of the members of the Nawab's family and dependents, her husband, Meer Jaffarally, or her two surviving children (daughters) possess any claim upon Government for a pension on her account, and, if so, to what amount, and whether this arrangement should have retrospective effect. This lady died on the 9th January 1845, and at that time Government had under consideration a recommendation which had been submitted by Sir Robert Arbuthnot on the 24th of the preceding month, that Government should guarantee to her an allowance for life of not less than 3,000 rupees per mensem, inclusive of whatever property she might inherit from her father, and a division being hereafter made of his private estate.

19. In his present report, Sir Robert Arbuthnot states that Buehlyarevool Neesa Beegum has left two children, both females, the elder of whom is five and the younger three years of age, and that he is of opinion that both of these children, as well as their father, Meer Jaffarallee, are entitled to a provision from Government. It must not, however, be forgotten, that if the pension formerly suggested by Sir Robert Arbuthnot had been granted to Bueblyavool-neesa Beegum during her lifetime, it would have been resumable on her death. Her children, therefore, have no right to expect that Government will continue to them for their lives the whole of this pension, although perhaps they might expect that the allowance of their deceased mother should have retrospective effect from the Nawab's death until the date of her decease, and that a portion of that allowance should be assigned for their future maintenance.

20. As already observed, it was proposed by Sir Robert Arbuthnot, previously to the death of Beebbyawoheesa Beegum, that Government should guarantee to her a total monthly income of 3,000 rupees, inclusive of what she would derive from her share of her deceased father's estate. In his present report, Sir Robert Arbuthnot has suggested, in modification of his former suggestion, that Government should assign this lady an allowance of 1,500 rupees per mensum for the entire period intervening between the Nawab's and her own death; that from the latter date the entire allowance (1,500 rupees) be settled upon Meer Jaffarallee, and that on his death the allowance be continued to his two daughters for life, in the proportion of a moiety to each.

21. It does not appear probable, from Sir Robert Arbuthnot's Report, that the entire annual produce of the Nawab's estate, after payment of his just debts, will

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will exceed the sum of 24,000 rupees per annum. Of this amount a moiety (being 12,000 rupees per annum, or 1,000 per month) would be the share of Buehlyarooherra Beegum. According, therefore, to Sir Robert Arbuthnot's first proposition to make up the Beegum's total monthly income to 3,000 rupees, a pension of 2,000 rupees, and not 1,500 rupees, as now proposed by him, should be granted to her by Government. The Governor in Council is of opinion, with reference to all circumstances, that the former of these amounts is not too large a sum; you are accordingly authorised to pay to the heirs of Buchlyarool Meesa Beegum, arrears of pension at the rate of 2,000 rupees per mensem, from the 9th August 1842, being the day following the death of the late Nawab, to the 9th January 1845, the date of this lady's death.

22. It is evident that from the death of Buchlyarool Meesa Begum, neither her husband nor her daughters possess any valid claim on Government for the continuance of the whole of this allowance; Government, however, deeming the parties entitled to liberal consideration, has resolved to contribute the whole of this stipend to them for life, in the proportion of 1,000 rupees per mensem to Meer Jaffarallee, and 500 rupees per mensem to each of his daughters. It should be most distinctly intimated to Meer Jaffarallee that each of those allowances will be resumed on the death of the incumbent.

23. The claims of Badshab Begum, one of the sirdaws of the late Nawab, next require consideration. This lady, who is a great grand-daughter of the late Nawab of Broach, was married to the late Nawab of Surat in the year 1816; but for many years preceding his death, he appears to have separated himself from her, and to have treated her with indignity. Sir Robert Arbuthnot entirely acquits this lady of having deserved this treatment, and is impressed with a belief that it was occasioned by her having refused to associate with some of the Nawab's friends in a way that would have been discreditable to her, Government has already granted Badshab Begum a pension of 500 rupees per mensem for her support. This arrangement came into effect on the 1st April 1845, and it remains to be determined whether the lady possesses any further claim upon Government. In June 1845, this lady complained of the inadequacy of this allowance, and in reply, she was informed that no addition could be made thereto.

24. Baelshab Begum, it appears, refused to receive any assistance from Meer Jaffurallee after the Nawab's death, and supported herself from the date of his demise in August 1842, until the grant of the above pension (from 1st April 1845), by borrowing money. This lady has satisfied Sir Robert Arbuthnot that during this period she borrowed the sum of *Rs.* 19,904. 10. 6. on this account, and the amount she now claims from Government; the Governor in Council is pleased to permit this pension to have retrospective effect from the 9th August 1842, the day following the Nawab's death, instead of from the date of grant; under this decision, Badshab Begum will be entitled to the sum of *Rs.* 15,870. 14. on account of arrears; as an act of liberality, however, and in consideration of this lady's unfortunate position, and her general good character, Government has resolved to release her altogether from this debt, and to allow her the difference between that amount and the arrears of pension clear to her, namely, *Rs.* 4,033. 12. 6. On this amount, *Rs.* 19,904. 10. 6. being paid to Badshab Begum, she should be distinctly informed that she possesses no further claim upon Government, with the exception of the continuance to her for life of her monthly stipend of 500 rupees.

25. The late Shahzadee Begum, alluded to in the 27th and following paragraphs of the Report, was a niece of the late Nawab, being the daughter of his late deceased brother by a concubine. This lady died in April 1844, and no pension was assigned by Government for her support previous to her decease, and she refused to receive any assistance from Meer Jafferallee. A claim has been advanced on Government by Sirdee Romee, the chief eunuch in charge of the ladies of the family of the late Nawab, for the sum of *Rs.* 30,117. 0. 3., which he states he borrowed at the request of the deceased Shahzader Begum, for her support from the period of the Nawab's death, in August 1842, until that of her own demise in April 1844, and for the support of her establishment from the latter date until pensions were granted by Government, in March 1845, to the dependents of the late Nawab. The Governor in Council concurs in opinion

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with Sir Robert Arbuthnot that this claim is altogether inadmissible, and that Government can in no way be held responsible for any portion of this debt. This claim should, therefore, be disallowed, and an intimation to this effect be made to the claimant, Sirdee Goomee.

26. Under the circumstances stated by Sir Thomas Arbuthnot in the 32d and 33d paragraphs, the Governor in Council is pleased to sanction the arrangements therein proposed in regard to such of the Nawab's followers to whom pensions have been assigned by Government as were supported by Shabzadee Beegum.

27. With reference to the 34th paragraph of the Report, the Governor in Council considers that it will be only just that Government should allow the pension which would have been assigned to Shadzadee Beegum had she survived, to have effect from the day following the Nawab's death until that of her own decease in April 1844. Sir Robert Arbuthnot states that if this lady had lived, he would, with reference to her position and claims, have recommended the grant to her of a monthly pension of 300 rupees. Before, however, Government pass any decision on this suggestion, you are requested to explain why Sir Robert Arbuthnot has recommended that the pension which Government may assign to the deceased should have effect from the 1st November 1843 only, instead of from the 9th August 1842, as in the case of Badshab Beegum and other female members of the Nawab's family.

28. The arrangement proposed in the 37th paragraph, in regard to continuing for life to Ameer-ool Nissa Begum the pension of 500 rupees per mensem at present temporarily granted to her, is approved of by Government, as also the recommendation made by Sir Robert Arbuthnot that this arrangement may be permitted to have retrospective effect from the day after the Nawab's death. The application preferred by this lady for an increase to this allowance cannot be complied with.

29. The Governor in Council is also unable to comply with the application preferred by Booah Eijab Bahar, for an increase being made to the pension of rupees 40 per mensem, which has been assigned by Government for her support. This female was a concubine to the late Nawab, and Government has very liberally provided for her by the grant of this allowance.

30. The pensions and allowances granted to the family and dependents upon the late Nawab under the former orders of Government, and those contained in this letter, amount, on the aggregate, to the monthly sum of rupees 4,475, or rupees 53,700 per annum. In order, however, to obviate the possibility of future misunderstanding, the Governor in Council directs that the payment of the pensions to Jafferalee and the other relations, connections, and dependents of the late Nawab, be delayed until each of the parties to whom they have been awarded have in each case formally accepted them in satisfaction of all demands.

31. The proceeds alluded to in para. 44 of the Report, as being in deposit in the treasury of the Collector of Surat, should, as suggested by Sir Robert Arbuthnot, be appropriated to the payment of the *bonâ fide* debts of the late Nawab; care should, however, be taken in the payment of Meer Jaffer Allee's claims that the decision of Government contained in a previous part of this letter in regard to his demands, on account of the establishment which he kept up after the Nawab's death is strictly attended to.

Vede para. 13, *et seq.*

32. The subject alluded to in the 55th to 58th paras. of the Report is engaging the consideration of Government, and the result will be hereafter communicated to you.

33. From the statement marked D, accompanying the Report, it appears that the total claims, inclusive of interest, prepared before Sir Robert Arbuthnot against the estate of the late Nawab, amounted to *Rs.* 420,360. 4. 9. This amount was claimed by 136 creditors. Sir Robert Arbuthnot has admitted claims to the extent only of *Rs.* 155,511. 2. 8., being a little more than a quarter of the total amount of demands. On the grounds detailed in statement D, the remainder of those claims, amounting to the sum of *Rs.* 304,853. 2. 1. have been disallowed. The Governor in Council sees no reason to dissent from the

the decisions which Sir Robert Arbuthnot has passed upon these claims, and his proceedings are therefore confirmed, with the exception of the claim No. 9. In regard to this item, the amount of interest which Sir Robert Arbuthnot has allowed (*Rs.* 305. 3. 4.) appears too large. The Government in Council is of opinion that this amount will be sufficient to allow for interest a sum equivalent to the balance due on account of the principal, viz., *Rs.* 193. 4. This decision should accordingly be carried into effect, and the sum of *Rs.* 386. 8. should be paid to the claimant in full satisfaction of his demand, instead of *Rs.* 498. 7. 4., the amount awarded to him by Sir Robert Arbuthnot. 3 May 1856.

34. The decisions passed by Sir Robert Arbuthnot in the several cases contained in Enclosures marked B, Nos. 5, 6, 9, 13, 16, and 19 and 22, appear proper, and are accordingly confirmed by Government.

35. Finally, I am desired to state, that the Honourable the Governor in Council considers Sir Robert Arbuthnot to be deserving of great commendation for the care and patience with which he has investigated the numerous and, in many cases, intricate points involved in this inquiry, and that he merits the approbation of Government for the great labour and attention he has bestowed upon their investigation.

I have, &c.
(signed) *A. Malet*,
Secretary to Government.

Bombay Castle,
10 October 1856.

From *A. Malet*, Esq., Secretary to Government, Bombay, to the Register of the Sudder Dewannee Adawlut, dated 10th October 1846.

Sir,

I AM directed by the Honourable the Governor in Council to transmit to you, for the purpose of being laid before the Judges of the Sudder Dewanee Adawlut an extract, part of para. 1, paras. 10, 27, and part of 58, from a Report by Sir Robert Arbuthnot, late agent for the Governor at Surat, dated 3d November last, on the affairs of the late Nawab, together with the original enclosures* thereto, enumerated in the margin, containing his decision upon the claims advanced by the relatives of the deceased to share in his private property, upon various claims made by other parties to property belonging to the estate of the Nawab, at present under sequestration. 10 October 1846.

* (A), Nos. 1 to 8. (B), Nos. 1, 2, 4, 7, 8, 17 and 23.

2. I am directed to request that you will be pleased to move the Judges to obtain the opinion of their Mahomedan law officer whether these decisions are in each case in conformity with Mahomedan law and usage in this part of India.

3. You are requested to return with your reply the original documents which accompany this letter.

I have, &c.
(signed) *A. Malet*,
Secretary to Government, Bombay.

Bombay Castle,
10 October 1846.

From *A. Malet*, Esq., Secretary to Government, Bombay, to the Register of the Sudder Adawlut, dated 10 October 1846.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 27th December last, No. 2952, submitting the draft of an Act declaring the period from which the relations and dependents of the late Nawab of Surat ceased to be exempted from the jurisdiction of the Company's Courts, and to request that the Judges of the Sudder Adawlut will be pleased to cause Article I. of this proposed Act to be amended as altered in red ink in Enclosure No. 1 to this letter.

2. I am at the same time desired to forward to you, for the purpose of being laid before the judges, an extract, paras. 10 to 12, and 55 to 58, from a report from Sir Robert Arbuthnot, late agent for the honourable the Governor at Surat, dated 3d November last, and, with reference to the circumstance therein brought to notice, to observe that the Governor in Council is of opinion that

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that while it is decided that the relatives, servants, and dependants generally of the late Nawab shall no longer be exempted in civil matters from the jurisdiction of the ordinary tribunals, still it would be proper, as a mark of consideration, to make an exemption (similar to what was made in regard to Coloba) in the cases of two widows of the late Nawab of Surat, and also of Meer Jaffer Allee and his two daughters.

3. The Governor in Council accordingly requests the opinion of the Judges of the Sudder Adawlut upon this proposition, and also whether, in the event of this exemption being determined upon, it will not be advisable to effect this arrangement by an additional clause, to take the draft Act forwarded with your letter, dated the 27th December last, instead of by a separate enactment.

4. I am also desired to request that the Judge will cause an addition to be made to the legislative enactment above alluded to, conferring upon Government the power authoritatively to decide upon the complicated claims involved in the decisions alluded to in my separate letter of this date, No. 3834, so as to preclude dissatisfied parties from hereafter appealing to the Honourable Company's courts of law against these decisions.

I have, &c.

Bombay Castle, 10 October 1846. (signed) *A. Malet*,
Secretary to Government.

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28 October 1846.

From *W. H. Harrison*, Esq., Register, to the Secretary to Government Political Department (Bombay), dated 28 October 1846.

Sir,

Present:
B. Hutt, esq.
P. W. Legyt, esq.
G. Grant, esq.

I HAVE the honour, by direction of the Judges of Sudr Dewanee Adawlut, to acknowledge the receipt of your letter, No. 3834, of the 10th instant, referring for the opinion of the Mahomedan law officers of the court certain decisions of the agent for the honourable the Governor at Surat, upon claims advanced by the relations of the late Nawab to share in his property, &c.

2. On this subject the court instruct me to bring to the notice of the Honourable the Governor in Council the difficulty that is experienced in complying with this requisition. Some of the decisions in question appear to be on the claims of parties who are relations to succeed to the inheritance of the deceased Nawab of Surat; and these may perhaps rest almost altogether on the law of the faith of the parties concerned; many others, however, seem to be decisions on the claims of parties to property taken possession of by the late Nawab during his lifetime, his right to which is disputed; and these may embrace considerations to which general principles of jurisprudence apply with as much force as any connected with Mahomedan law.

3. In regard to both classes of decisions, I am further desired to submit that for the Cazee to give the general opinion called for, the whole of the proceedings held before the agent at Surat should be laid before him. The accompaniments to your letter consist of the claimants' petitions in English, and the agent's minutes, containing his decisions in the same language. For these to be even translated to enable the law officer to form the opinions required of him, would be a work of much time, and it could not be effected within a reasonable period without a sacrifice of the business of the court, unless the entertainment of an extra establishment for the especial purpose is sanctioned.

4. The Judges apprehend, moreover, that the opinion thus obtained would scarcely be satisfactory to Government, in matters respecting which want of precision in propounding the questions referred, might probably invalidate the judgment given by the Cazee, and perhaps the decisions finally come to, which it is desired in your letter, No. 3835, dated 10th instant, to guard by legislative enactment, from being questioned in any court of law.

5. For these reasons, the court consider it would be the more regular and least objectionable course for Government to transmit such specific questions as they may desire to refer for the opinion of the law officers of the court in regard to the decisions in question; and in returning herewith the enclosures to your letter

letter under reply, the Judges direct me to solicit further intimation of the wishes of the Honourable the Governor in Council on the subject. 3 May 1856.

I have, &c.
(signed) *W. H. Harrison,*
Register.

Bombay, Sudr Dewanee Adawlut,
28 October 1846.

MINUTE by the Honourable the Governor, concurred in by the Honourables *T. M'Mahon* and *L. R. Reid*; dated 8 February 1847.

1. WE must, I am of opinion, regard the obstacles mentioned in this letter to a compliance with the request contained in the Government letter of the 10th October last to the register of the Sudder Adwlut as of such importance and difficulty, that we cannot expect the judges to furnish us with the information applied for, which was, whether the decision passed by Sir Robert Arbuthnot upon the numerous claims advanced by the relations of the late Nawab of Surat to share in his private property, and upon various claims made by other parties to property now under sequestration belonging to the estate of the deceased, are in each case in conformity with the Mahomedan law and usage in this part of India. These cases are embraced in the voluminous enclosures to Sir Robert Arbuthnot's report of the 3d November 1845, marked A. 1 & 8 and B. 1, 2, 4, 7, 8, 17 & 23; and in making the above reference to the judges, they were furnished with these documents. 8 February 1847.

2. These claims were very numerous, and in several instances of an extremely complicated nature; and if it were practicable, which I very much doubt, to frame a series of questions embracing the whole of the points involved in these decisions, for the purpose of obtaining the decision of the Mahomedan law officer of the court, as suggested in the last paragraph of the register's letter, it would still be unsafe to do so, since, in order to enable him to offer a correct opinion, it would be requisite that each of the decisions should be taken in connexion with the nature of the proofs advanced for and against each of the claims, and the grounds of each of Sir Robert Arbuthnot's decisions in all their various ramifications must be considered in detail. Under this difficulty, I see no alternative but that Government must itself decide these claims.

3. I do not perceive any reason for questioning the justice of Sir Robert Arbuthnot's decisions upon any of the claims embraced in them. The late Government, I observe, has with reference to the other points of Sir Robert Arbuthnot's settlement of the late Nawab, recorded his opinion that he is "deserving of great commendation for the care and patience with which he "has investigated the numerous and in many cases intricate points in this "inquiry, and that he merits the approbation of Government for the great "labour and attention he has bestowed upon their investigation." In these sentiments I must fully concur; and since, as far as we have the power of judging, substantial justice appears to have been afforded by Sir Robert Arbuthnot to each of the claimants whose interests are involved in the cases of which the particulars are given in the 15 enclosures to his report above alluded to, I would now confirm each of these decisions, leaving open an appeal on the part of any individual who may be dissatisfied with the decision on his claim, when the case could be fully considered.

* Marked (A), 1 to 8; and (B), Nos. 1, 2, 4, 7, 8, 17 and 23.

(signed) *G. Clerk.*
T. M'Mahon.
L. R. Reid.

8 February 1847.

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3 May 1856.

From *W. H. Harrison*, Esq., Register to the Court of Sudder Adawlut, Bombay.

To the Secretary to Government.

Political Department,
dated 10 December 1846.

Sir,

10 Dec. 1846. I HAVE the honour, by direction of the Court of Sudder Dewanee Adawlut, to acknowledge the receipt of your letter, No. 3835, of the 10th October last, on the subject of the position of the relations and dependents of the late Nawab of Surat, in respect to the jurisdiction of the civil courts.

2. In reply, the judges instruct me to state their concurrence in the opinion expressed in the concluding part of the second paragraph of your letter, in regard to the exemption of the personages alluded to from the jurisdiction of the ordinary tribunals in civil matters; and they therefore desire me to submit the accompanying amended Draft Act, which they believe will be found to embrace all that is required by Government on this point, as well as the others referred to in the third and fourth paragraphs.

I have, &c.
(signed) *W. H. Harrison*,
Register.

Bombay, Sudder Dewanee Adawlut,
10 December 1846.

DRAFT ACT.

WHEREAS the exemption from the jurisdiction of the Civil Courts enjoyed by certain persons under the provisions of Clause 2, Section 21 of Regulation II. of 1827, ceased and determined at the death of the late Nawab of Surat.

And it has been deemed advisable to continue such privilege to certain of the parties heretofore exempted, and to modify the full operation of the laws in respect to others.

It is hereby enacted, that the personages whose names are specified in Schedule (A.) annexed to this Act shall be exempted from the ordinary jurisdiction of the Civil Courts of Justice of the East India Company, in respect to any claims for debts or other matters cognizable by the said courts.

It is further enacted, that all claims for debts or other matters ordinarily cognizable by the civil courts shall be heard and determined before such officer as the Governor in Council of Bombay may appoint, and that all such claims shall be tried by such officer, in the same manner and under the same rules as are enacted in Section 5, Clause 1, of Regulation xxix. of 1827, for the trial of claims against Surdars of the first class in the Deccan.

And it is further enacted that any dispute or question as to the validity of the title to any real property actually held by the late Nawab, at the date of his death, or by any other person under the grant from the said Nawab, shall be tried by the officer, and under the rules indicated in the preceding section, and not by the ordinary Civil Court of the East India Company.

And it is further enacted, that the limitation of time for filing claims in the civil courts provided in Regulation V. of 1827, shall be held in respect to all persons who were exempted from the jurisdiction of the civil courts by the provisions of Clause 2, Section 21, of Regulation II. of 1827, to commence from the 8th of August 1842, the date of the late Nawab's death.

And it is further enacted, that deeds registered under the provisions of any Act passed by the Governor-general in Council of India shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the promulgation of this Act by any persons distinctly exempted under the said Clause 3, Section 21, of Regulation II. of 1827, provided such deed relate to property conveyed to the owner prior to the date of the death of the late Nawab.

3 May 1856.

MINUTE by the Honourable the Governor, concurred in by His Excellency the Commander-in-Chief, dated 8th February 1847.

As I observe, from the 2d paragraph of Mr. Reid's Minute, dated the 8th September last, that Sir George Arthur's Minute of the 25th April last, proposing, amongst other arrangements, the preparation of this Draft Act, was framed in communication with Mr. Reid, I beg the favour of his opinion whether this draft embraces all that is requisite.

(signed) *G. Clerk.*
T. M'Mahon.

MINUTE by the Honourable Mr. *Reid*, concurred in by the Honourable the Governor, and by His Exellency the Commander-in-Chief, dated 12 April 1847. 12 April 1847.

THE draft Act which the Sudder has submitted does not seem to me fully to meet the object of Government, inasmuch as it does not hold the Government harmless in having on the demise of the Nawab secured his property, with the view to its eventual distribution according to justice.

I believe the Government has sanctioned the payment of sums of money out of the proceeds of the estate, for the maintenance of the family, in liquidation of debts, &c. The Act should set out with legalising the proceedings of Government so far as they have gone, and should provide for the primary distribution of the property of whatever nature, leaving all subsequent litigation to be carried on, if the privileged parties are concerned, before the Government Agent, otherwise before the ordinary courts of law.

(signed) *L. R. Reid.*
G. Clerk.
W. Cotton.

From *M. Larken*, Esq., Acting Register to the Secretary to Government, Political Department, dated 12 May 1847. 12 May 1847.

Sir,

I HAVE the honour by direction of the Court of Sudr Dewanee Adawlut, in compliance with the instructions contained in your letter, No. 1,475 of the 22d ult., to submit an amended draft Act in respect to the family and estate of the late Nawab of Surat.

I am at the same time instructed to state, that if it be deemed necessary to give sect. 3 a wider application with regard to the disposal of the property alluded to, the words "among the family of the said Nawab," might be omitted.

I have, &c.

Bombay Sudr Dewanee Adawlut, 12 May 1847. (signed) *M. Larken,* Acting Registrar.

DRAFT ACT.

WHEREAS it is expedient to provide for the primary administration of the estate of the late Nawab of Surat; and whereas the exemption from the jurisdiction of the civil courts enjoyed by certain persons under the provisions of clause 2, section 21, Regulation II. of 1827, ceased and determined at the death of the said late Nawab, and it is deemed desirable to continue such privilege to certain of the said parties;

1. It is hereby enacted, that the personages whose names are specified in Schedule (A.) annexed to this Act, shall be exempted from the ordinary jurisdiction of the civil courts of justice of the East India Company, in respect of any claims for debts, or other matters cognisable by the said courts.

3 May 1856.

2. And it is further enacted, that in respect to such personages all claims for debt, or other matters ordinarily cognisable by the civil courts, shall be heard and determined before an officer who shall be appointed by the Honourable the Governor in Council of Bombay, and who shall try them in the same manner and under the same rules as are enacted in section 5, clause 1, Regulation XXIX. of 1827, for the trial of claims against surdars of the first class in the Deccan.

3. And it is hereby enacted, that it should be competent to the Honourable the Governor in Council of Bombay, to act in the administration of the property of whatever nature left by the late Nawab of Surat, in regard to the primary disposal thereof among the family of the said late Nawab; and that all acts of the said Honourable the Governor in Council of Bombay in respect to such property from the date of the demise of the said late Nawab, shall be held to be valid and not liable to be questioned in any court of law.

4. And it is further enacted, that the limitation of time for filing claims in the civil courts provided in Regulation V, of 1827, shall be held in respect to all persons who are exempted from the jurisdiction of the civil courts by the provisions of clause 2, section 21, of Regulation II. of 1827, to commence from the 8th day of August 1842, being the date of the demise of the said late Nawab.

5. And it is further enacted, that deeds registered under the provisions of any Act passed by the Governor-general in Council of India shall ~~not~~, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the promulgation of this Act by any persons distinctly exempted under the said clause 2, section 21, of Regulation II. of 1827, provided such deed shall relate to property conveyed to the owner prior to the date of the demise of the said late Nawab.

(signed) *M. Larken*,
Acting Registrar.

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1 Sept. 1847.

From *A. Malet*, Esq., Secretary to Government Bombay, to *G. A. Bushby*, Esq., Officiating Secretary to the Government of India, Fort William; dated 1 September 1847.

Sir,

With reference to my letter to Sir F. Currie, dated the 10th October 1846, No. 339, I am directed by the Honourable the Governor in Council to transmit, for the consideration of the Honourable the President of the Council of India, the accompanying draft of an Act to provide for the administration of the estate of the late Nawab of Surat, and for the exemption from the jurisdiction of the Honourable Company's civil and criminal courts of the widows and certain relations of the deceased.

I have, &c.

Bombay Castle,
1 September 1847.

(signed) A. *Malet*,
Secretary to Government.

(True extract.)

(signed) *W. Malet*, Chief Secretary.

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30 Sept. 1847.

To the Honourable the Court of Directors for Affairs of the Honourable East India Company, London.

Political Department,
30 September (No. 116), 1847.

Honourable Sirs,

In our despatch, dated the 16th November, No. 126 of 1846, we reported to your Honourable Court the proceeding we had adopted consequent on the final report submitted by Sir Robert Arbuthnot, late agent for the Honourable the Governor at Surat, upon the various claims which have been advanced to the private property of the late Nawab of Surat, accompanied by his opinion in regard to

3 May 1856.

to the mode in which that property should be distributed, and repoating on the claims upon the British Government possessed by Meer Jaffer Allee and his two children, and by the other connexions and dependants of the deceased Nawab.

2. In the above report, we stated that, amongst other arrangements, we had authorised the payment to the heirs of the late Beektyar ool Nissa Begum, the only surviving daughter of the late Nawab, at the time of his death, arrears of pension at the rate of 2,000 rupees per mensem, from the 9th August 1842, being the day following the Nawab's decease, to the 9th January 1845, the date of this lady's death; and that we had resolved to continue for life the whole of the above pension of 2,000 rupees per mensem to Meer Jaffer Allee, the husband, and to the two daughters of the late Beektyar ool Nissa Begum, in the monthly portions of 1,000 rupees to Meer Jaffer Allee, and 500 rupees to each of the daughters; each portion of this grant being resumed on the death of the incumbent. We, at the same time, stated that in order to obviate the possibility of future misunderstanding, we had directed that payment of the pensions assigned to Meer Jaffer Allee and the other relations, connexions, and dependants of the late Nawab, and which, as shown in our despatch above-mentioned, amount in the aggregate to 53,700 rupees per annum, should be delayed until each of the parties to whom they have been awarded, had, in each case, formally accepted them in satisfaction of all demands.

3. On the above decision been communicated to Meer Jaffer Allee, he stated it to be his intention shortly to submit an appeal to your Honourable Court, re-urging, on behalf of the two infant daughters of his late wife, a claim to the whole of the annual allowance of 150,000 rupees, which the late Nawab received from the British Government; and soliciting that, in the meantime, he might, without prejudice to that claim, be paid all such sums as had been admitted by Government on account of outlays incurred by him in maintaining the members of the family and dependants of the late Nawab until pensions were assigned to them by Government for their support, and on other accounts. We authorised Mr. Stewart, then in temporary charge of the office of the Agent for the Government at Surat, to comply with the application, and in a letter, dated the 6th February last, Mr. Stewart reported, that under this sanction he had paid to Meer Jaffer Allee the sum of *Rs.* 105,320 2*a.* 7*p.*, being the amount authorised by Government. For detailed particulars of the several items, of which this amount is composed, we beg to refer to Mr. Stewart's letter above-mentioned, and to a report from Mr. Andrews, the agent, dated the 20th July last.

4. In Collection No. 2, we beg to forward in original a memorial to the address of your Honourable Court from Meer Jaffer Allee, to the effect alluded to in the preceding para. This memorial concludes with the following request: "Your memo-
" rialist refrains from repeating to your Honourable Court the arguments adduced
" in the memorials* of the late Beektyar-ool Nissa Begum, to establish his right
" to the annuity, nor will your memorialist now enter into the question who are
" to be regarded as the heirs of the late Nawab; but your memorialist respectfully
" submits that the late Beektyar-ool Nissa Begum was the sole descendant of the
" late Nawab living at his decease, and your memorialist's children as her only
" issue, and the sole descendants of the Nawab now alive, are justly entitled to
" receive from your Honourable Court the annuity of 1,50,000 rupees. But if it
" should be considered by your Honourable Court that heirs-general of the late
" Nawab are entitled to the annuity, your memorialist believes he can establish
" that, notwithstanding the Mahomedan law administered in the courts of justice
" in India, his children are entitled to be regarded as the heirs-general of the late
" Nawab; but, whosoever may be determined to be such heirs, your memorialist
" trusts that your Honourable Court will on a review of the provisions of the
" agreement and of the circumstances attending its execution, declare that the
" annuity of 1,50,000 rupees has not expired with the dignity of Nawab, but is
" still payable out of the revenues of Surat; and your memorialist humbly prays
" that your Honourable Court will be pleased to direct the Goverment of Bombay
" to pay the same to your memorialist on behalf of his children during their
" infancy, and afterwards to themselves and their heirs for ever."

* *Vide* despatches from this Government, dated the 30th March and 18th May, No. 24 and 32 of 1844.

5. For our sentiments in regard to the above request, we beg to refer to a minute recorded by our Honourable President under date the 21st inst., stating it to be his opinion that Meer Jaffer Allee and his two daughters have been treated

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with the greatest liberality in the provision which, subject to the confirmation of your Honourable Court, was made to them by the government of his predecessor Sir George Arthur, and that, for the reasons mentioned in the same minute, his Honour is of opinion that Meer Jaffer Allee possesses no valid pretensions whatever to the claim he has advanced in his memorial. The Honourable Mr. Reid has concurred in the above minute, and the Honourable Mr. Willoughby, in a separate minute dated the 28th inst., to which we beg to refer, has expressed his entire concurrence in the views which our Honourable President has taken of the case.

6. From the proceedings which form Collection No. 3, your Honourable Court will observe, that on the 1st inst., we forwarded for the consideration of the Government of India a draft Act providing for the administration of the estate of the late Nawab of Surat from the period of his demise, and from the exemption from the jurisdiction of the Honourable Company's civil and criminal courts of the widows, and certain of the relatives and principal connexions of the deceased.

7. In Collection No. 4, accompanying this despatch, we beg to forward copies of several representations lately preferred by Meer Mooeedeen Khan, the Bukshee of Surat, soliciting assistance from Government in effecting a settlement with his creditors of their pecuniary demands, which amount, in the aggregate, to between three and four lacs of rupees; and praying that, in consideration of his being a near relative of the late Nawab, he may be declared by Government to be exempted from the jurisdiction of the Company's civil and criminal courts. From our proceedings your Honourable Court will observe, that we have directed the Agent for the Governor at Surat to communicate with the Bukshee on the several points on which he is desirous of obtaining aid from Government, and to render him such assistance as may be proper in the settlement of his affairs, referring for the orders of Government on any point upon which instruction may be required. In consequence of his near relationship to the late Nawab, we intend to include the Bukshee amongst the members of the deceased's family, whom we propose to exempt from the jurisdiction of the Honourable Company's Zillah Courts. In the meantime we have informed the Agent for the Governor at Surat that the Bukshee should continue to be exempted from the jurisdiction of the Zillah Courts, and be considered under his jurisdiction alone.

8. As observed in a previous para. of this letter, your Honourable Court are already aware, that up to the date of our despatch of the 16th November, of 1846 (No. 126), we had assigned life pensions, amounting in the aggregate to the sum of 53,000 rupees per annum, to the relatives, connexions, and dependents of the late Nawab for their support. From the proceedings, which form Collection No. 5, accompanying this despatch, your Honourable Court will observe that, since the above date, we have granted further pensions to other connexions and dependents of the deceased, for whom, for the reasons explained in our proceedings, no provision had previously been made, amounting in the aggregate to the sum of 3,576 rupees per annum, making the sum total of pensions which have been granted 57,456 rupees.

We have, &c.
(signed) *L. R. Reid.*
Bombay Castle, 30 September 1847. *J. P. Willoughby.*

5th February 1848.

Fort William, Home Department, Legislative.
The 5th February 1848.

The following Draft of a proposed Act was read in Council, for the first time, on the 5th of February 1848.

Act No, — of 1848.

An Act for the administration of the Estate of the late Nawab of Surat.

primary

Whereas it is expedient to provide for the administration of the estate of the late Nawab of Surat, Meer Ufzooloodeen Khan, Kumrood Dowleh Ushmut Jung Bahadoor; and whereas the exemption from the jurisdiction of the civil and criminal courts enjoyed by certain persons under the provisions of Clause 2, section XXI, Regulation II. of 1827, and Clause 2, section I, Regulation XI. of 1827

1827 [of the Bombay Code], ceased and determined at the death of the said late Nawab, and it is deemed desirable to continue such privilege to *some* of the said *persons*. 3 May 1856. certain parties.

I. It is hereby enacted, that the Governor of Bombay in Council shall be and is hereby empowered to exempt from the jurisdiction of the civil and criminal courts the widows and such of the present relatives of the late Nawab of Surat as may to him seem proper, and to declare the persons so exempted amenable to the authority of an agent whom he may appoint for this purpose.

II. And it is hereby enacted, that it shall be competent to the ^ Governor in Council of Bombay to act in the administration of the property of whatever nature left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nawab at the time of his demise, and [to make] ^ distribution of the remaining property among his family, and that all acts of the said ^ Governor in Council of Bombay, in respect to such property, from the date of the demise of the said late Nawab, shall be held to be valid, and not liable to be questioned in any court of law. Honourable the primary Honourable the

III. And it is further enacted, that the limitation of time for filing claims in the civil courts, provided in [the said] Regulation V, of 1827, shall be held in respect to all persons who are exempted from the jurisdiction of the civil courts by the provisions of Clause 2d, Section XXI, of [the said] Regulation II, of 1827, to commence from the 8th day of August 1842, being the date of the demise of the said late Nawab.

IV. And it is further enacted, that deeds registered under the provisions of any Act passed by the Governor General in Council of India, shall not, on the sole ground of priority of registration, invalidate deeds which may be duly registered within six months from the promulgation of this Act by any persons distinctly exempted under the said Clause 2d, Section XXI of Regulation II, of 1827, provided such deed shall relate to property conveyed to the owner prior to the date of the demise of the said late Nawab.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 5th of May next.

(signed) *G. A. Bushby*,
Secretary to the Government of India.

MINUTE by the Honourable the Governor, concurred in by the Members of the Board, dated 4th March 1848.

This Act, with the exception of a few verbal alterations shown in blue ink, is precisely the same as the draft sent by this Government for the approval of the Government of India. No observation or suggestion appear to me requisite.

(signed) *G. Clerk*,
W. Cotton,
L. R. Reid,
J. P. Willoughby.

FROM Meer Jafur Alee Khan Bahadoor to the Honourable *G. R. Clerk*, Esq. Governor in Council, Bombay, 11th March 1848.

Honourable Sir, Dated 11 March 1848.

HAVING observed in the public papers that an Act for the administration of the estate of the late Nawab of Surat has been laid before the Legislative Council, I beg to call the attention of your Honor in Council to the second clause of the Act, which I am advised is so framed as to prevent the agent at Surat investigating and deciding upon several very important subjects relating to the Nawab's estate, which I am desirous of submitting to him for decision.

 Being

3 May 1856.

Being satisfied that it cannot be the intention either of your Honor in Council, or of the Legislative Council, to pass a law for the purpose of debarring me from asserting what I believe to be my undoubted rights, and denying me even an appeal to the authority specially constituted under the Act to dispense justice, I beg to submit, for the consideration of your Honor in Council, the accompanying clause in lieu of clause 2 of the Act; and I trust that your Honor will be pleased to recommend its adoption to the Legislative Council.

I have, &c.

(signed) *Meer Jafur Allee Khan Bahadoor.*

Bombay, 11 March 1848.

That the estate and effects of the late Nawab, and the administration thereof, shall be exempt from the jurisdiction of the civil courts of justice, and shall be under the authority of the agent, to be appointed as aforesaid, but subject to the control of Government; and that no action or suit shall be brought in any court of law for any act done by the agent or other officer of the Governor in Council at Surat since the decease of the late Nawab respecting his estate or effects.

15th March 1848.

Political Department, 15 March (No. 7) 1848.

Our Governor in Council at Bombay.

We now reply to your letters and paragraphs on the family and estate of the late Nawab of Surat, being the following:

Political Letter, dated 24 December (No. 144) 1845, paras. 49 and 53.
" 16 November (No. 126) 1846, entire.
" 31 August (No. 108) 1847, para. 48.
" 30 September (No. 116) entire.

2. We shall first advert to your proceedings respecting the private property of the family.

3. You have decided that the Wakaya Negaree fees or town duties and taxes on trades and professions, which were formerly collected by the late Nawab, and for a part of which he was receiving compensation from Government, were held by him on a mere life tenure, and have theretofore lapsed to Government. You have accordingly abolished what remained of their duties, and discontinued payment of the compensation.

4. The Waglall Huks, on the contrary, you consider as private property, and since it appeared that the Nawab had signed them, by deed of gift, to his Carbarree Allee Beg, you have made them over, with arrears from the Nawab's death, to that individual, subject to any claims which the family of the late Abdoola Beg (to whom they had been assigned at an earlier period) may establish in course of law. The Haks will still continue to be collected by Government, and the proceeds paid to Mahomed Ali Beg.

5. Sir R. Arbuthnot has carefully examined and impartially adjudicated the claims preferred by members of the Nawab's family and others to lands, jewels, or other property in his possession at the time of his death; some of these claims have been admitted, others rejected, and in both cases, as far as we can determine, on just grounds; a reference however having been made to the Judges of the Sudder Adawlut to obtain the opinion of their Mahomedan law officers on the question of law and usage, as applicable to many of these decisions, to which reference we cannot trace any reply, our confirmation cannot at present be given to the proceedings.

6. An investigation has been made by the same officer into the Nawab's debts and other pecuniary claims on his estate. These appear to have been adjudicated on just principles; claims of very old date, which had never been recognised by the Nawab in his lifetime, have been very properly rejected; large charges for interest on the pieces of goods sold have been disallowed. But substantial justice seems in all cases to have been done.

7. Among

3 May 1856.

7. Among the claims on the estate were those of Meer Jaffur Alle Khan, son-in-law of the Nawab, for having defrayed the funeral expenses, and having maintained a great number of the Nawab's relatives and dependants until the decision. The disbursements on these accounts have been refunded in the following manner: the amount of the pensions, since assigned to the various persons whom he supported, have been paid to him for the period in question. Your Government has contributed 8,000 rupees towards the funeral expenses, and 20,000 rupees towards the maintenance of the establishments; the remainder has been made a charge against the private estate of the deceased.

8. That private estate has been in sequestration since the Nawab's decease, and a considerable sum had accumulated from its proceeds, applicable to the discharge of the various claims. You have not informed us whether that sum has been applied to the purpose, what portion of debt still remains unpaid, what arrangements have been made respecting the payment of interest on the balance, or for the liquidation of the principal from the property under attachment. We wish for complete information on these points.

9. Although no accurate estimate of the private property is before us, it appears to be your opinion that after all claims are satisfied, there will remain property of the value of about 24,000 rupees per annum, to be divided among the heirs of the deceased.

10. The shares which fall to each, according to the Mahomedan law, as declared by the law officer consulted by Sir R. Arbuthnot, are the following: one-half to the deceased's daughter, Bukhtyar oon Nissa Begum (who being since dead, her share will be divided among her family), one-sixteenth to each of the two widows, and three-sixteenths to each of two collateral male relatives, the Bukshee and Meer Kunroodeen Khan.

11. This decision having been referred to the judges of the Sudder Adawlut, we must desire to be furnished with their reply.

12. The privileges in respect to jurisdiction enjoyed by the Nawab's family having terminated in the extinction of the office, you have submitted to the Government of India a draft Act authorising you to grant to such members of the family as you may think fit, an exemption from the jurisdiction of the regular courts, and at the same time legalizing all acts done by your Government as administrator to the Nawab's estate.

13. The question remains, what amount of provision is to be continued to the family of the Nawab.

14. On this point, in our political letter, dated 4th September (No. 24) 1844, we expressed ourselves as follows:

"It is our desire that no member of the family may suffer in circumstances, nor, "so far as possible, in dignity, by the change which has taken place in their "position, and we are not anxious that any larger portion of the 1½ lac per annum "should be saved to Government than that which was properly applicable to the "maintenance of the titular rank of Nawab, and which will now no longer be "necessary."

15. Sir R. Arbuthnot's letter, dated 18th December 1844, shows that he never understood these instructions, and so far as he is concerned they have remained a dead letter.

16. Your Government has assigned to the various relatives and dependants whom you considered to have a claim to a provision, life pensions amounting in the aggregate to 57,456 rupees per annum. The remainder of the half lac, being 92,544 rupees per annum, is saved to Government immediately, and the whole ultimately.

17. In the aggregate of 57,456 rupees are included allowances of 500 rupees each per month to the two widows of the Nawab, and 2,000 rupees to his daughter, from the date of whose death 1,000 rupees have been continued for life to her husband Meer Jaffer Allee, and 500 rupees to each of her two daughters.

18. This is a far less degree of liberality than was contemplated in the instructions above quoted. We cannot suppose that nearly two-thirds of the stipend of

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1½ lac were expended in the support of a titular dignity, and can now be withheld without impairing either the substantial comforts of the survivors, or such appendages of rank as are suitable to their present position.

19. We desire, therefore, that the amount of the pensions be reconsidered, and full effect given to the spirit of our former instructions.

20. We greatly regret that you should have thought it advisable to withhold payment even of the moderate stipends which you have granted until the grantees should give an acquittance in full of all further claims. Such a condition has not only an appearance of illiberality, but is calculated to give an expression that your Government attaches some weight to claims from which it shows so great a desire to be legally released.

21. We direct that as soon as possible after the receipt of this despatch, the arrears of the pensions granted by you be paid unconditionally from the Nawab's death to all the persons from whom they have hitherto been withheld. Any addition which may afterwards be made to the pensions will take effect from the same date.

22. The Memorial of Meer Jaffer Allee, transmitted to us three months after its receipt by you, has been duly considered. In that document, Jaffer Allee renews his claim on behalf of his daughters to the entire stipend of the Nawab. You will inform him that his memorial has not altered our opinion on the subject, and that our decision is final.

23. You have recommended that a pension of 12,000 rupees per annum be granted to the Bukshee, in consideration of his indigence and connexion with the family of the late Nawab. The Bukshee's branch of the family possesses a separate provision of 24,000 rupees per annum from Government; having neither been entitled to, nor received any support nor pecuniary assistance from the Nawab, he has no claim after the Nawab's death to anything beyond the share of the private property to which he may be entitled by law, and which, if Sir R. Arbuthnot's decision will be confirmed, will secure to him a considerable addition to his present means of support.

We are, &c.
(signed) *H. St. Geo. Tucker,*
J. J. Lushington.
&c. &c.

London, 15 March 1848.

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10 April 1848.

From the Chief Secretary to the Government at Bombay, to *G. A. Bushby*, Esq., Secretary to the Government of India; dated 10 April 1848.

Sir,

With reference to the draft Act for the administration of the estate of the late Nawab of Surat, now before the Legislative Council of India, I am directed by the Honourable the Governor in Council to transmit to you, for submission to the Right honourable the Governor General of India in Council, copy of a letter from Meer Jafur Allee Khan, dated the 11th ult., soliciting a modification of clause 2 in the draft Act in question.

2. In forwarding this letter, I am directed to explain that it is the intention of this Government, on the passing of the above Act, to empower the agent for the Honourable the Governor at Surat to summon all parties who claim to participate in the late Nawab's estate, and, after the full inquiry, to adjudicate their respective claims, consulting on all parts of law the Mahomedan law officers of the greatest repute.

3. The agent's decisions will be subject to the confirmation, and all appeals against those decisions will be entertained and finally decided by Government.

4. After the proceeds of the estate have been thus distributed, all future cases of dispute, with the exemptions noticed in the Act, will be subject to the jurisdiction of the ordinary tribunals of the country.

5. Under the above explanations, the Governor in Council does not consider any exchange necessary in the draft Act as now framed.

I have, &c.
(signed) *A. Malet,*
Chief Secretary.

Bombay Castle, 10 April 1848.

3 May 1856.

5th July 1848.

MEMORIAL from the undersigned, Meer Jaffer Allee Khan, Bahador of Surat, to the Right Honourable Viscount *Falkland*, Governor, and Council, Bombay; dated 5 July 1848,

Most respectfully showeth:

THAT on the 4th of November 1846, your memorialist received a letter from the Acting Agent of the Honourable the Governor at Surat, in which it was intimated that no payment of the pensions assigned by Government to the relatives and descendants of the late Nawab of Surat would be made until those pensions had been formally accepted in satisfaction of all demands.

That your memorialist and his family, considering the amount of pension granted to them to be not only unjust in itself, but far smaller than was contemplated by the Honourable Court of Directors in their decision upon their case (the particulars of which need not be detailed to your Lordship), declined giving an acquittance for such pension in full of all demands, and consequently were refused payment by the Agent.

That on the 21st inst., your memorialist received a letter from W. C. Andrews, Esq., the present Agent for the Governor, informing him that he was authorised to pay the pension, with arrears, unconditionally to parties, who had not up to that time received their stipends, in consequence of the proviso that a release from all future claims should be given by them on the occasion of the repayment, and your memorialist to inform him to whom the amount of the arrears of pension due to himself, his late wife, and her two daughters, should be paid.

That your memorialist would readily, in reply to this letter, authorise his brother, now at Surat, to receive the amount of the above arrears, but he is informed by his said brother that the Agent declines making the offered payment without receiving from your memorialist a specific acquittance, as far as pension, at the rate of (2,000 rupees) two thousand per month. That your memorialist is willing to give a receipt for the amount as on account of pension, but that were he to agree to the terms proposed by the Agent it would be generally supposed in Surat he had accepted the pension of 2,000 rupees per month as a final arrangement; and as his expenses amount, and have amounted, to more than double that sum, his creditors would lose confidence in him, and press him for payment of the large debts he has been compelled to incur pending the settlement of his claims on Government. That your memorialist would, therefore, solicit your Lordship to give instructions to the Agent at Surat, that in paying the amount now proposed to be made over to your memorialist and his family, a simple receipt for such amount as for a payment on account of an allowance from Government to your memorialist and his family (without naming any specific sum), be accepted by him.

That your memorialist begs further to bring to your Lordship's notice, that when in England a few years ago for the purpose of submitting his claims to the Court of Directors, he had several interviews with Captain Sheppard, then Chairman of the Court, and that before leaving he was assured by that gentleman to entertain no fears about the result of his appeal; that although he would not probably receive so large an allowance as the late Nawab, yet he would obtain nearly as much, and that his best plan would be to rely implicitly upon the justice of the Court, and return to India.

That your Memorialist placed great confidence in these assurances on the part of the Chairman of the Court of Directors (which, he may mention, were made in the presence of several other gentlemen), and that trusting in them, he acted upon Captain Shepherd's advice, and returned to this country.

That, as your Lordship is aware, the Bombay Government, after considerable delay, decided on granting him and his family an allowance of 2,000 rupees per month, a sum utterly disproportionate to the income of the late Nawab, and totally inadequate to the maintenance of your memorialis tand his family in the station which they have been accustomed to hold.

That your memorialist is certain, that without a degree of niggardliness and economy which could never have been contemplated by the Honourable Court, your memorialist could not reduce the expenses of himself and his family below the sum of 4,500 rupees per month, or thereabouts, and that he has proved this to the Agent for the Governor, by submitting his account books for the inspection of that officer.

3 May 1850.

That from about the 25th of October 1843 to the month of April last the expenditure for the maintenance of the family amounted to 241,525 rupees.

That the whole of this sum was of necessity borrowed from the bankers and other wealthy persons of Surat, and that the interest upon which is, at 9 per cent. per annum, gradually increasing to a very considerable amount; money being extremely scarce at present, the creditors are disposed to press their claims.

That your memorialist before long will have to marry his daughters; and according to Mahomedan usage, and consistently with his station in life, a sum of 2 lakhs of rupees at least will have to be expended, besides which, after the conclusion of the marriages, other large payments will have to be made

That the difficulties of your memorialist and his family have been further increased by Government having taken possession of the whole of the private property of the family, a subject upon which frequent remonstrances have been made, and which now forms the ground of a memorial to the authorities.

That the proceedings in reference to the claims of your memorialist, since the death of the late Nawab, have been carried on during three or four different Governments without any just or satisfactory decision having as yet been come to.

That your memorialist having suffered much anxiety and trouble, has become involved in debt, and has had to undertake a voyage to England, in the hope of securing his rights. That should your Lordship see fit to bring the matter to a favourable issue he will regard the determination as the deliverance of a sinking man from ruin, and his elevation to that position which is his just right, and which it is evident the Honourable Court of Directors desire he should occupy.

That your memorialist has many other grievances which might be brought forward, but he is content that only a few should be adduced at a time, and on those being redressed, to advert to them on a future occasion.

That your memorialist is induced, by the uprightness of your Lordship's character, and the liberal views by which you are believed to be actuated, to entertain a confident hope that his case will meet with favourable consideration, and at your hands, and that he places his appeal before you, trusting, first, that you will deem it proper to authorise the Agent at Surat to pay the amount now due unconditionally, and without any receipt, as for a specific monthly allowance; and secondly, that you will be pleased, with all practicable dispatch, to give effect to what your memorialist is aware were the liberal views and intentions of the Honourable the Court of Directors with respect to the allowance to be granted to him and his family.

And your, &c.

Camp Poona, 5 July 1848. (signed) *Jafur Ally.*

(No. 123.)

MEMORANDUM.

1. The chief Secretary begs to state that Mr. Andrews, Agent to the Right Honourable the Governor at Surat, was on the 14th ult, in accordance with instructions contained in a despatch from the Honourable Court, dated the 15th March last, informed that Government had resolved to rescind its former order, requiring an acquittance in full of all further claim from the relatives and dependents of the late Nawab, previous to the payment of the pensions which have been granted to them. Mr. Andrews was at the same time authorised forthwith to pay unconditionally to the parties who have not hitherto received their stipends in consequence of the above proviso, whatever amount may be due to them.

2. If therefore Mr. Andrews, as stated by Meer Jafeer Allee in his present representation, has, in giving effect to the above order, declined to pay the arrears of pension due to Jaffeer Allee without a specific acquittance as for a pension at the rate of 2,000 rupees per mensem, he has done so in contravention of the orders of Government.

3. With reference to Meer Jaffeer Allee's complaint concerning the inadequacy of the pension allotted to him by Government, the orders of the Honourable Court above alluded to direct that the pensions should be increased. Mr. Andrews was accordingly directed on the 14th ult. to furnish to Government an account of the amount formerly expended in the maintenance of the titular rank of Nawab,

and

and to state his opinion whether in the pensions which have been granted to any persons who may be considered to have a claim on the liberality of Government, have hitherto been excluded through oversight. Mr. Andrews has been further directed to submit a statement, showing in a tabular form the amount of stipend which has been granted by Government to each of the connections and dependents of the late Nawab, the total amount each person formerly received from the Nawab, and what increase he may be of opinion it will be proper, with reference to the sentiments of the Honourable Court, to make in the case of each stipendiary. 3 May 1856.

(signed) *A. Malet*,
Chief Secretary.

Bombay Castle,
13 July 1848.

From *A. Malet*, Esq., Chief Secretary to Government Bombay, to *W. C. Andrews*, Esq., Agent for the Right Honourable the Governor at Surat; dated 23 October 1848.

Sir,

The Government of India having, on the 26th August last, passed an Act (No. XVIII. of 1848), "for the administration of the estate of the late Nawab "of Surat, and to continue privileges to his family," I am directed by the Right Honourable the Governor in Council to instruct you to issue a notification calling upon all persons having claims, of whatever nature, on the property left by the late Nawab, to submit them to you on or before a certain date to be fixed by you. 23 October 1848,

2. On these claims being preferred to you, you should enter upon their investigation, summoning parties and witnesses before you in the same manner as you would do as a judge in civil cases. On the conclusion of each case you should submit your proceedings to the Government, accompanied by your opinion upon the validity, or otherwise, of the claim.

3. The debts due by the late Nawab should first be investigated and settled, after which the claims of parties coming forward as heirs should be considered and determined on, a report of your proceedings being submitted for the review and decision of Government.

4. His Lordship in Council requests that you will ascertain how far the parties concerned in the cases investigated and reported on by Sir Robert Arbuthnot, in his letter dated the 3d November 1845, acquiesce in the award of that gentleman, and if not, you are requested to state the precise nature and validity of the objection in each case.

5. In the memorial which Meer Jaffer Ali addressed to the Government of India on the 14th April * last, he alleged that the estate of the late Nawab ought not to be divided according to law, but according to the custom of the deceased's family. With reference to this statement I am desired to request, that after the *bonâ fide* debts of the late Nawab have been settled, and before the distribution of the remaining property, you will institute a searching inquiry on the subject, and, after receiving such proofs as Meer Jaffer Ali, on the one side, and those claiming shares under the Mahomedan law on the other, may have to advance, submit your report for the consideration and decision of Government.

* Forwarded with your letter to Government, of the 17th April 1848.

6. I am at the same time directed to inform you, that any peculiarities of inheritance which may have arisen out of the exercise of power by a sovereign prince (such as in these matters was the Nawab of Surat) must not be too readily construed into the custom of a family, in the distribution of his property, after the extension of the sovereignty.

7. His Lordship in Council is pleased to empower you, in all your investigations connected with the affairs of this estate, to consult any of the Government Mahomedan law officers, it not being advisable that you should confine yourself to those of the Surat Adawlut. In order that you may receive all requisite assistance, the judges of the zillahs under this Presidency have been requested, through the Sudar Adawlut, to instruct the Mahomedan law officers of their

3 May 1856.

courts to answer, in writing, any questions that you may deem it necessary to put to them on points of law.

8. I am further desired to inform you, that after the proceeds of the late Nawab's estate have been distributed all future cases of dispute, with the exceptions noticed in the Act, will be subject to the jurisdiction of the ordinary tribunals of the country.

9. As the consideration of numerous points has been postponed pending the passing of this Act, his Lordship in Council requests that you will prepare, and forward to Government, a statement, showing in detail each point on which its decision is awaited.

I have, &c.

(signed) *A. Malet,*
Chief Secretary.

Bombay Castle, 23 October 1848.

MINUTE by the Right Honourable the Governor, concurred in by the Honourable Board, dated 19th December 1848.

19 December 1848.

1. From the 2d and 3d paragraphs of this report it appears that no payments have as yet been made upon any of the admitted claims of the creditors of the late Nawab of Surat. Mr. Andrews reports in the 3d paragraph that he has directed a statement to be prepared showing the dividend to which these creditors will be severally entitled, from the balance now remaining in the treasury, of the realisations from the Nawab's private estate; this may be approved.

2. I have doubts whether the claim advanced by these creditors to interest can be admitted, but before finally deciding this point we must await Mr. Andrews' reply to the 4th para. of the instructions sent to him on the 23d October, No. 4,413. We have declined to recognise a claim which has been made by Meer Jaffer Allee for interest on advances which he made for the support of various members of the late Nawab's family, and on other accounts connected with the estate of the deceased. The admitted claims of the creditors could not, without risk to Government, be liquidated until after the passing of the late Act, and it might be considered harsh towards those who are entitled to share in the private estate of the Nawab, to deprive them, in consequence of this unavoidable delay of a portion of their just claims by awarding interest to the creditors. In consequence, moreover, of the interference of Government, the whole of the creditors will be paid in full all their *bonâ fide* claims, many of which are of old standing, and would probably never have been paid had their settlement been left to his Excellency or his heirs.

3. The Honourable the Court of Directors informed this Government in their despatch, dated the 4th September 1844, "It is our desire that no members of "the family may suffer in circumstances, nor so far as possible, in dignity, by "the change which has taken place in their position, and we are not anxious "that any larger portion of the 1 ¾ lac per annum should be saved to Govern- "ment than that which was properly applicable to the maintenance of the "titular rank of Nawab, and which will now no longer be necessary."

4. The above instructions were repeated in the Honourable Court's despatch of the 15th March last, with the following additional remarks: "Your Govern- "ment has assigned to the various relatives and dependents whom you con- "sidered to have claim to a provision, life pensions amounting in the aggregate "to 57,456 rupees per annum. The remainder of the 1 ¼ lac, being 92,544 "rupees per annum, is saved to Government immediately, and the whole ulti- "mately. In the aggregate of 57,456 rupees are included allowances of 500 "rupees each per month to the two widows of the Nawab, and 2,000 rupees to "his daughter, from the date of whose death 1,000 rupees have been continued "for life to her husband Meer Jaffer Allee, and 500 rupees to each of her two "daughters. This is a far less degree of liberality than was contemplated in "the instructions above quoted. We cannot suppose that nearly two-thirds of "the stipend of 1 ½ lac were expended in the support of the titular dignity and

"can

" can now be withheld without impairing either the substantial comforts of the " survivors or such appendages of rank as are suitable for their present position. " We desire, therefore, that the amount of the pensions be reconsidered, and " full effect given to the spirit of our former instructions." 3 May 1856.

5. On receipt of the above instructions, Mr. Andrews was directed to submit a statement, showing, in tabular form, the amount of stipend which has been granted by Government to each of the connexions and dependents of the late Nawab; the total amount each person formerly received from the Nawab, and what increase he may be of opinion it will be proper, with reference to the sentiments of the Honourable Court, to make in the case of each stipendiary.

6. Mr. Andrews was at the same time directed to frame and submit to Government a statement showing, as far as the same can be ascertained, the annual expenses incurred during the last five years of his late Excellency's life, "in the maintenance of the titular rank of the Nawab." This account, Mr. Andrews was informed, should include all guards, establishments, &c. maintained by the deceased on this account, and that, if practicable, the information should be obtained from the accounts kept by the late Nawab, of his expenses.

7. With reference to paragraphs 6 to 11 of Mr. Andrews's report, written in reply to the above call, I think that in giving effect to the instructions of the Honourable Court, we shall be evincing great liberality to the Nawab's family, if we reckon the amount which he annually set apart for the support of his titular at 40,000 rupees, being a little more than one-fourth of the annual allowance of a lac and a half of rupees, which he received from the British Government, under the provisions of the Treaty of 1800. This amount (40,000 rupees) exceeds, by the sum of *Rs.* 10,197. 5., the current expenses enumerated in the statement annexed to Mr. Andrews's Report; but I am not disposed to place much confidence in the accuracy of these calculations, as it must be impossible to define with any degree of accuracy, what was the Nawab's public and what his private expenditure. * Dated the 27th September, No. 289, of 1848.

8. It is notorious that the late Nawab maintained considerable state; and I doubt whether an annual sum of 50,000 rupees, or one-third of his Excellency's stipend, would have defrayed the expenses he incurred in maintaining the pomp and dignity of his station. In deference, however, to the liberal wishes of the Honourable Court, in regard to the provision to be made to this family, I would propose that the balance of the late Nawab's stipend which remains, after deducting the sum of 40,000 rupees, be divided amongst them in proportionate amounts. This will leave an annual sum of 1,10,000 rupees for distribution, being very nearly double the amount awarded to them by the Government of the Right Honourable Sir George Arthur.

9. The Honourable Court of Directors, as shown in the extract from their Despatch above quoted, allude to the pensions already granted to the Nawab's family as amounting to the annual sum of 57,546 rupees; since the preparation, however, of this statement, Shazadee Begum, niece of the late Nawab, who received an annual pension of 3,600 rupees, has died (in April 1844), and her stipend has lapsed to Government; and other stipends, amounting in the aggregate to the annual sum of 2,640 rupees, appear also to have lapsed. As the present total annual amount, the pensions are stated, in the Return submitted by Mr. Andrews, with his letter of the 7th instant, to be 51,306 rupees. It does not appear that any Report of the death of these parties has been submitted to Government; and the agent should therefore be directed to submit a statement, showing the names of the pensioners who have died.

10. Meer Jaffer Allee, the son-in-law of the late Nawab, is at present allowed a monthly pension of 1,000 rupees; I would now increase this amount to 2,000 rupees per mensem, he being, however, informed, that this increased stipend is to cover all claims of whatever nature he may consider he possesses on Government, in connexion with the estate of the late Nawab.

11. We have also granted to each of the two daughters of Meer Jaffer Allee, by Buctyar Ool Nissa Begum, monthly stipends of 500 rupees; I would increase each of these allowances to 1,200 rupees.

12. To Ameer Ool Nissa Begum, the mother of Meer Jaffer Allee's late wife

3 May 1856.

(Buktyar Ool Nissa Begum) has been assigned a monthly pension of 500 rupees; I would increase this stipend also to rupees 1,200 per mensem.

13. To Badshah, *alias* Doulum Begum, the other widow of the late Nawab, who at present receives a monthly pension of 500 rupees, I would evince the same degree of liberality, and would accordingly increase her stipend to rupees 1,200 per mensem. This lady is a great-granddaughter of the last Nawab of Broach, and was married to the late Nawab of Surat in the year 1816.

14. Aurus Begum, widow of a deceased brother of the late Nawab, has been allowed a monthly pension of 100 rupees. This might be increased to 250 rupees per mensem.

15. The above are the principal members of the family of the late Nawab; and their present and proposed pensions would stand as follows:

No.	NAMES.	Degree of Connexion of Relationship to the late Nawab.	Present Monthly Stipend.	Total Per Annum.	Proposed Future Monthly Pension.	Monthly Amount of Proposed Increase.	Total per Annum of Proposed Stipend.
1	Meer Jaffer Allee	Son-in-law	1,000	12,000	2,000	1,000	24,000
2	Zeeavon Nissa Larlee Begum.	Granddaughter	500	6,000	1,200	700	14,400
3	Rahinnon Nissa Begum.	ditto	500	6,000	1,200	700	14,400
4	Ameercool Nissa Begum.	Widow	500	6,000	1,200	700	14,000
5	Badsha Begum	ditto	500	6,000	1,200	700	14,400
6	Aurus Begum	Widow of a deceased brother of the late Nawab.	100	1,200	250	150	3,000
	GRAND TOTALS	*Rs.*	3,100	37,200	7,050	3,950	84,600

16. The above shows a total of 84,600 rupees per annum, which I propose to divide amongst the six individuals alluded to in lieu of the allowances, amounting in the aggregate to the annual sum of 37,200 rupees, they at present receive.

17. The total sum which I have suggested to be divided amongst the family and dependents of the late Nawab amounts to 1,10,000 rupees per annum; we have therefore a balance of 25,400 rupees, including present pensions, to allot to the remaining pensioners. From this amount, the lapsed pensions of Shazadee Begum (3,600 per annum), and the other lapsed stipends, altogether amounting to 2,640 rupees per annum, alluded to in paragraph 9, which leaves for disposal the sum of 19,160 rupees. From this last-mentioned amount is to be deducted the sum of 14,106 rupees, which is already distributed amongst the last-mentioned 180 pensioners, whose names are contained in the statement accompanying Mr. Andrews's letter of the 7th instant. We have, therefore, after making these deductions, a net balance of 5,054 rupees.

18. Government is not sufficiently acquainted with the merits, position in life, or relative claims of these 180 individuals to determine whether any, and if so, which of them, are deserving of having any increase made to their present allowances. A reference should therefore, I am of opinion, be made to Mr. Andrews upon this point.

19. The parties whose names are included under Nos. 7 and 11 in the above statement, are all either relatives or connections of the late Nawab. These persons draw pensions varying in amount from 50 rupees to 10 rupees per mensem. It may be proper to increase these stipends, and also those of some of the more respectable and faithful dependents of the late Nawab, who may have suffered pecuniary loss by the death of their master. The attention of Mr. Andrews should be called to this point in making the above reference.

20. I do

20. I do not think that we can in justice now review the acts of a former Government, with reference to the pensions alluded to in paragraph 12 of Mr. Andrews's letter of the 27th September last, except to increase any that may appear to be insufficient. 3 May 1856.

21. Under the report contained in paragraph 15, and with reference to the remark of the Honourable Court contained in the last paragraph of their despatch of the 15th March last, we are, I consider, precluded from assigning any pension to the Bukshee.

22. With reference to the 18th and following paragraph, the agent should be referred to the instructions communicated to him in the Government letter of the 23d ultimo.

23. The views expressed by Mr. Andrews at the conclusion of his letter are, I consider, correct.

(signed) *Falkland.*
W. Cotton.
L. R. Reid.
19 December 1848. *J. P. Willoughby.*

From Sir *Henry Elliott*, K.C.B., Secretary to the Government of India, with the Governor-general, to *Henry E. Goldsmid*, Esq., Secretary to the Government of Bombay; dated Camp Umritsur, 21 November 1850.

Sir,

I HAVE laid before the most noble the Governor-general your letter of the 30th ultimo, No. 132, and its enclosures, relative to the question of the legitimacy of Bukhtiar Ool Nissa, daughter of the late Nawab of Surat, and in reply am instructed to state for the information of the Right honourable the Governor in Council, that the Governor-general is decidedly of opinion the British Government cannot and ought not to interfere in the above case. 21 November 1850.

2. The British Government had a right, if it thought proper, to waive the question of illegitimacy, and to grant a public pension to the lady. But the Government has no right to prevent others from raising that question when it affects their private and family claims of inheritance.

I have, &c.
(signed) *H. M. Elliott,*
Secretary to the Governor of India,
Camp Umritsur, with the Governor general.
21 November 1850.

MINUTE by the Right Honourable the Governor; dated 25 September 1852.

1. I HAVE carefully considered the papers now before us, as containing the Report of Mr. W. E. Frere, Agent at Surat, on the claims to succession to the private estate of the late Nawab of Surat. 25 Sept. 1852.

2. The case has been one of some difficulty, but I am of opinion that this has been entirely overcome by the Agent, who has, with great discrimination, weighed all the circumstanees adduced by the various claimants in support of their pretensions.

3. It is first clearly shown, that the late Nawab not only made no testamentary disposition of his property, but he did not manifest his intentions with regard to it; it therefore became necessary to determine the principle to govern the inheritance and the selection of the heirs.

4. Mr. Frere, in paragraphs 27 to 40, of his Report, fully discusses the former of these questions, and, I think, circumstantially proves that the Mahomedan law should govern the division of the inheritance in the absence of any custom of the family to the contrary.

5. The claims of the several parties to participate in the inheritance involved questions connected with the Mahomedan law, and with the position of the late

3 May 1856.

late Nawab of Surat. I consider that Mr. Frere has acted with strict justice in giving, in a question relating solely to private property, that weight to the latter which was necessary to give to the late Nawab's daughter, Bukteer Ooe Nissa Begum those advantages of legitimacy which it appears that the Mahomedan law might not have accorded to her. I concur also fully in the train of reasoning by which the Agent is guided in decreeing to Padsha Begum and Ameer Ool Nissa the shares set apart by him for widows, and in deciding that Meer Moyenoodeen and Meer Kumroodeen should also receive their due portions. The claim of the heirs of Fukroo Nissa Begum, and that of Meer Surfoodeen, are invalid according to Mahomedan law.

6. Fully concurring therefore with Mr. Frere, I would adopt the conclusions so clearly and ably set forth in his Report, and under Clause 2, Act XVIII. of 1848, would adjudge the succession to the inheritance of the late Nawab of Surat in the following shares:

The Nawab's two granddaughters, Ruheen Ool Nissa Begum and Zeea Ool Nissa Begum - - - - - - $\frac{8}{16}$

The Nawab's two widows, Padsha Begum - - - - $\frac{1}{16}$

Ameer Ool Nissa Begum - - $\frac{1}{16}$

Two great grandsons of the Nawab's great grandfather's brother in the male line, Meer Moyenoodeen - - - $\frac{3}{16}$

Meer Kumroodeen - - - - - - - - - $\frac{3}{16}$

25 September 1852. (signed) *Falkland.*

FURTHER MINUTE by the Right Honourable the Governor, concurred in by the Honourable Mr. *Blane*, dated 17 November 1852.

17 November 1852.

MY honourable colleague, Mr. Blane, concurs with me in approving the principles of Mr. Frere's decision; and although the Honourable Mr. Bell has not expressed his opinion, I think it will be proper to act on that of the majority of the Board; and under Section 2, of Act XVIII. of 1848, direct Mr. Frere to draw up his award in the form of a decree, and to furnish each of the claimants with a copy; a period of 90 days being allowed before carrying it into execution, to allow the parties time to make any representation to Government.

(signed) *Falkland.*

17 November 1852. *D. A. Blane.*

On Meer Jaffer Ali Khan's Petition.

MINUTE by the Right hon. the Governor, dated the 3d June 1853.

3 June 1853.

HAVING already expressed my approval generally of the principles on which Mr. Frere's opinion, as set forth in his Report, is founded, it now only remains to be seen what alterations or modifications of that opinion are rendered necessary by the arguments urged against it by Meer Jaffer Ali.

2. Before entering on the merits of the case, I would remove an objection made in the 143d paragraph of Meer Jaffer Ali's letter. This objection did not escape my observation, as will be seen in my minute of the 25th of September last, and was anticipated by my honourable colleague, Mr. Bell, who, in his minute of the 2d of October, pointed out that it is the Governor in Council, who, by the Act, is empowered to administer to the estate of the late Nawab of Surat, and that that authority could not be delegated to the agent.

3. The Act, however, does not prescribe what course the Governor in Council is to pursue in the discharge of this duty, and the course we have adopted appears to me not only perfectly unobjectionable, but the most fair and convenient for all parties.

4. It

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4. It would have been impossible for us to have prosecuted the inquiry into all these conflicting claims ourselves; the Agent for the Governor, who was the medium of communication between the Government and the late Nawab, was therefore (as the fittest person for that purpose) directed to make the necessary preliminary investigation. This was done, and we received Mr. W. E. Frere's Report on these claims. This Report we were at liberty to have adopted as our decision, and to have acted on at once, or we might have decided and acted in any way we pleased; but instead of adopting any arbitrary mode of proceeding having generally approved of the Report, we desired Mr. Frere to draw it up in the form of a decree, and to furnish each of the parties concerned with a copy of it, directing them to prefer any appeal they might have to make within 90 days. We now have their objections before us, and can pass any decision in the case that appears to us just and proper, and this will be our decision as the Act requires it should be, and not the decision of the Agent, or of any subordinate officer.

5. There is also another plea which, though like the above objection, not brought forward till the close of Meer Jaffer Ali's letter (*vide* paragraph 138) may be deemed preliminary, and one that should be disposed of before entering on the merits of the case.

6. It is that the Nawab having died, and the Nawabship having been declared extinct, the petitioner and his wife immediately become subject to the jurisdiction of the Zillah Court, and could only be legally deprived of the Nawab's estate by the course laid down in the Regulations, which he (Meer Jaffer Ali) contends, would have had the effect of placing him in the strong position of a defendant, with nothing to do but to defend his possession against the claims of others, instead of having the disadvantage of being forced to prove his own title to the estate.

7. The Nawab died in 1842, and it was only in October 1846 that it was finally decided that on his death his relations and dependants ceased to be exempt from the jurisdiction of the Zillah Courts.

8. It is impossible at this distance of time to say what the zillah judge might have done had he been aware of his authority, or what the Suddur Adawlut, who would have heard the appeal, might have decided; but I find that chap. 2 of Regulation VIII. provides for the appointment of an administrator both when the heir is present and undetermined, and when the heir is unknown; and from the intricate nature of this case, as shown in Mr. Frere's Report, it would, I think, have been judicious in the zillah judge had he, under existing circumstances, appointed an administrator when the Nawab died, and in such case Meer Jaffer Ali would have been in no better position than he is at present, nor would he have been entitled to the greater consideration he now claims at our hands, in virtue of the asserted hardship of his position.

9. The questions involving the merits of the case which Meer Jaffer Ali submits to us for decision in his letter are:

10. First. "Is there or is there not a claim, by reason of the marriage "contract, to the entire succession on behalf of himself and his wife's descen- "dants binding on equity and good conscience?" And if there be, unless the Nawab can be shown to have repudiated such obligation in the most clear and unequivocal manner, he avers that his right to succeed is established.

11. Secondly. Supposing the marriage contract not proved, what were the Nawab's intentions with regard to his successor? And if Government come to the conclusion that his (the Nawab's) intention was to benefit some particular object of his affection, to the exclusion of others, Meer Jaffer Ali claims that such intention on the Nawab's part should decide the rule according to which the estate should be appropriated.

12. Thirdly. Supposing that the Nawab's intentions cannot be distinctly ascertained, he calls on us to identify ourselves with the Nawab's feelings towards the different parties, and to apportion the estate as nearly as possible as the Nawab would have done.

13. Lastly. He repudiates the idea that the Mahomedan rule of succession, irrespective of the Nawab's intentions, should be adopted, any more than any

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other known code; and he avers, that under all circumstances of the case, his claim alone can be supported.

14. First. As to his claim under the marriage contract, which, if proved, establishes his right.

15. Reference has been made in former petitions and memorials to some written contract between the Nawab and Meer Jaffer Ali's father, Meer Surferaz Ali, but the contract itself is now produced, for the first time, ten years after the Nawab's death. The agent evidently views it with suspicion; but because the terms of it have, with Meer Jaffer Ali's consent, been departed from by the Nawab placing his grandson, Meer Ameenoodeen, on the musnud, the agent has not recorded any positive decision regarding it.

16. It is certainly remarkable, I may say marvellous, that this enquiry should have been pending for many years, and that the above-mentioned document, or one of the copies of the said document, which purports to have been Meer Jaffer Ali's contract of marriage, should not have been produced before.

17. Nor is our cause for wonder at this omission removed when Meer Jaffer Ali states, in the 37th paragraph of his letter, that the copy with the Nawab's mark on it, in the possession of Meer Surferaz Ali, was in Meetarani's handwriting; and that the rough draft, now for the first time produced before Mr. Frere, was in Meer Surferaz Ali's possession, who, he does not deny, in the 35th para, was aiding the barrister who conducted Meer Jaffer Ali's case before Sir Robert Arbuthnot, when he (the Meer) first laid claim to the inheritance many years ago.

18. It is also difficult to understand the object with which the original and this rough copy are now produced, as they in no way tend to support one another. Supposing the sealed agreement genuine, it ought to have been in the custody of the agent at Surat, who took possession of all the Nawab's property and papers in A. D. 1842; but this document having been found, as we learn in para. 37, amongst the papers of Meerza Mahomed Ali Beg, was not under the guardianship of the proper custodian, and would require the very strongest evidence to establish its authenticity, and it certainly derives no support from the rough draft produced with it; and the marked copy in Meer Suferaz Ali's possession being now for the first time produced, though, as before remarked, the former was in the possession of the agent employed in prosecuting Meer Jaffer Ali's claims when they were first made the subject of inquiry.

19. But supposing this marriage contract proved, there is still another document wanting, for this contract promises that a will shall be made in favour of Meer Surferaz Ali's son. No will is forthcoming, and Meer Jaffer Ali contends, that a letter to Meer Surferaz Ali, and another to Mr. Williams, the then Commissioner in Guzerat, superseded the necessity for a will. I cannot bring myself to subscribe to this doctrine, for the effect of such subscription would be to admit that the exigencies of a formal covenant requiring another formal deed might be fulfilled, by informally dispensing with any deed at all, and without any direct communication with the parties most interested; for neither of the letters are written to Meer Jaffer Ali or to Meer Akbar Ali.

20. As the marriage contract, then, is not satisfactorily proved, and the covenants of it have neither been fulfilled nor even placed in train for fulfilment, we need not look for any repudiation of it, in order to throw out Meer Jaffer Ali's claim, as founded on such contract, and may proceed to the consideration of the question, what were the Nawab's intentions respecting his succession.

21. Meer Jaffer Ali contends that it was the Nawab's intentions to benefit him and his wife, to the exclusion of all other parties. In arguing this point Meer Jaffer Ali takes advantage (paragraph 23) of a doubt which he supposes to exist in Mr. Frere's mind of what the Nawab's intentions were, had his daughters married the grandsons of the King of Delhi, to enter on the consideration of all his Excellency did when treating of an alliance with that family, as well as with the sons of the Nawab of Baroda. But these treaties had

had no relation to that between his Excellency and Meer Surferaz Ali; and motives that might have actuated the Nawab when an alliance with him was sought by the Imperial House of Delhi, or even by a Nawab with a mere title of courtesy, though in reality of good family, might all have ceased to operate when reduced to treat of an alliance for his daughters with the sons of a mere Sirdar of the Gartewar of no hereditary distinction, however wealthy that Sirdar might be.

22. We may then pass over all arguments and reasoning deduced from those treaties, and confine our attention to the 31st and three following paragraphs of Meer Jaffer Ali's letter, in which he contends that the Nawab, though informed in November 1830 that his wish to make his sons-in-law his successors could not, it was feared, be complied with, even to his death in 1842 held out hopes to Meer Jaffer Ali and his brother Meer Akbar Ali, that they would eventually succeed him.

23. Meer Jaffer Ali contends in the 9th paragraph of his letter that this point was never in dispute, and consequently that no inquiry ought to have been made on this head. If the point never was in dispute there was no necessity for Meer Jaffer Ali's producing evidence to establish it; his having brought forward proofs tends to the inference that the point was at issue; and if it was not, he put it before the agent for decision by producing evidence in support of it, and we must decide it according to that evidence, and need not make any reference to Surat to learn how the question came to be raised.

24. The proofs Meer Jaffer Ali brings of the Nawab's intention to make him his heir are: the marriage contract the Nawab's letter to Meer Surferaz Ali, and his letter to Mr. Williams, both the last written in 1834; but from that year until 1840 we cannot find one single act of the Nawab's performed apparently with the view to the prosecution of this supposed design. At the end of these six years' however, it is asserted that he placed his infant grandson Meer Ameenoodeen on the musnud, and we are called on to declare this act to to be a recognition of Meer Jaffer Ali's right of succession, and a proof that the Nawab from the period of the first treaty of marriage, until his death in 1842, looked on Meer Jaffer Ali as his successor.

25. And if we do not concede this point to Meer Jaffer Ali, he contends that placing his grandson on the musnud might as well be declared an act of abdication on the Nawab's part, as a breach of his contract with Meer Surferaz Ali, which the agent held it to be. Had the Nawab ever given any public intimation of this proceeding, it very probably might have been considered an act of abdication; but, at any rate, had Government sanctioned the proceeding, and acknowledged Meer Ameenoodeen as successor, it would certainly have extinguished all Meer Jaffer Ali's claims to succeed to the musnud or property, either under the marriage contract or any other title.

26. In the absence of all positive proof of the Nawab's intentions towards his sons-in-law, much stress is laid on his wishes when in treaty with the grandsons of the King of Delhi, for some arrangement with regard to his succession, and the pertinacity with which he, like all natives of India, cling to any project he had formed.

27. My own experience of the native character is not to be put in comparison with the experience of either of my civil colleagues; but, short as it has been, I should have expected to have found the proposals reiterated and the question revived and pressed, both in season and out of season, frequently during the period that intervened between the Nawab's reference to Government and his death, had he really and seriously retained the intention of seeking to have his sons-in-law declared his successors. But as the subject was never once reverted to during these 12 years, either in communication with the agent or with Government, I must conclude from this conduct, otherwise so usual as to be inexplicable, that he had from the first refusal or hesitation on the part of Government to comply with his request, abandoned all hope of ever attaining his object.

28. Meer Jaffer Ali having failed to prove the two first points, next calls on us to place ourselves in the Nawab's position, and to identify ourselves with his

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feelings towards the different parties claiming to be entitled to partake of his bounty, and, having so done, to partition the estate.

29. In doing this, he requires us to perform an impossibility, for we have nothing but his own assertions of the Nawab's affection for him and his wife, and his declarations that this affection was well known to all the inhabitants of Surat, European as well as Native, upon which to form any opinion of what the Nawab's feelings had been since 1834 towards Meer Jaffer Ali and his wife. Had the Nawab's feelings and intentions been what Meer Jaffer Ali says they were, it seems very improbable that he would have abstained, during nine whole years, from formally declaring or expressing them in writing. We all know that no well-bred Musselman would allow anything that takes place within the zenana to transpire out of doors; so that even had we the agents with whom the Nawab himself held personal communication now to refer to, we could not hope to elicit much information from them while the Nawab's carriage towards his son-in-law, when in public, would not enable us to form a judgment of what his private feelings might be; and as it is evidently, therefore, impossible for us to ascertain to a certainty what sentiments the Nawab entertained for Meer Jaffer Ali, we cannot place ourselves in the position of his Excellency, and adjudicate in accordance with those sentiments, if convinced they were opposed to the feelings he cherished towards the other claimants.

30. Having thus disposed of the grounds on which Meer Jaffer Ali bases his claim to a right of preference over all the other parties, I will, before considering why the Mahomedan rule of inheritance is the best we could adopt as our guide in the decision of this case, revert to the 82d and following paragraphs of the Meer's letter, in which he argues that according to the usage of the Nawab's family, his children would succeed to the property; and also to the 115th paragraph, in which he contends that by the Regulations of Government, usage has more weight in determining the validity of claims than the religious law of the parties.

31. The latter point may be conceded; and if Meer Jaffer Ali can prove any established usage, we shall be bound to make our decision in accordance with it.

32. The agent was under the impression that the usage it was sought to establish of property descending, undivided, was common to the whole family of Ali Humdanee, but from the 188th to the 110th para. of Meer Jaffer Ali's letter, it appears that he does not assert that the custom is common to the whole family. Indeed, he admits that partitions were made in the Bukshee's branch of the family, but declares it to be the exclusive custom of the Nawab's branch; and this admission being made, that point need be no further discussed, for the admission reduces what was originally supposed to be an assertion of a particular custom invariably prevailing in a particular family, to a mere declaration that the Nawabs allowed nobody to share in the property left by their predecessors.

33. The agent, early in the course of this inquiry, was cautioned against confounding what was a custom that might have obtained in the Nawab's branch of the family from his authority being absolute, with what was the custom common to the whole family; and as the custom now contended for is argued to be one peculiar to the Nawab's branch of the family, and apparently from Meer Jaffer Ali's not insisting upon it as one of the points for our decision given up as untenable, it necessarily falls to the ground, nor need I take any notice of the mistake Mr. Frere is shown to have made, in calling those who are only relations by affinity collateral kindred, as if they were descended from a common ancestor.

34. We now come to the last objection urged on us for consideration by the Meer against the Mahomedan rule of succession being adopted in preference to any other known code.

35. We need not, for the reasons assigned by Mr. Frere, in paragraph 40 of his Report, stop here to notice the question raised by Meer Jaffer Ali in the 122d and 123d paragraphs of his letter, as to whence the objection originated to the

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the orthodoxy of the late Nawab's tenets. The late Nawab professed himself a Mussulman, though the objection made to him on account of heresy is more likely to have originated with Meer Jaffer Ali and those who sought to avoid the rules of Mahomedan law, than with the Meer's opponents, who would uphold those rules, and carry their claims, on the ground that the Nawab was a Mahomedan, and subject to their laws; but we should gain nothing by settling this point.

36. Meer Jaffer Ali's objections to the Mahomedan law of inheritance being followed, are to be found in the 116th and subsequent paras. of his letter, and he there offers strictures on Mr. Frere, calling these rules the Lex Loci. I am not able, nor is it necessary for me to decide whether Mr. Frere is critically correct. What I understand Mr. Frere to mean is, that if a Mahomedan died in England, owning landed property in Surat, his personal property would be divided according to the English law, while his landed or real property would descend according to the Mahomedan law of succession; and if this be the case, it is mere waste of time to discuss whether the Mahomedan law be, as regards Mussulmans, rightly called the Lex Loci or not.

37. With regard to Meer Jaffer Ali's arguments against our adopting the Mahomedan law in preference to any other, they fail of themselves, as his objections are founded on the assumption that we adopt the Mahomedan law arbitrarily and in disregard of the Nawab's intentions; but that is a fallacy; we adopt the Mahomedan law because Meer Jaffer Ali has not been able to prove what the Nawab's wishes or intentions regarding his property were, because there was no custom proved to exist in the family generally which militated against a division of the property, because we could find no law to which the real property was subject, except the Mahomedan law, and because we could find no law at all to which the personal property of the Nawabs had been hitherto subjected, as we were led to think; and on those grounds I would now adopt the Mahomedan law as the safest guide we can follow in disposing of this intricate case, and I would therefore, under sect. 2 of Act XVIII., of 1848 (as I can find no ground for altering or modifying my minute of the 25th of September last) adjudge the succession to the inheritance of the property of the late Nawab of Surat in the following shares:

The Nawab's two granddaughters, Raheemoolnissa Begum, and Zeeaoolnissa Begum	$\frac{8}{16}$
The Nawab's two Widows:	
Padshah Begum	$\frac{1}{16}$
Ameeroolnissa	$\frac{1}{16}$
Two great-grandsons of the Nawab's great-grandfather's Brother, in their male line:	
Meer Mogeenoodeen	$\frac{3}{16}$
Meer Rumroodeen	$\frac{3}{16}$

38. Any objections which Meer Jaffer Ali has urged against what the agent proposed towards the other heirs, and which appeared to me worthy of notice, I have considered in my minutes on their several petitions.

39. The members in Meer Jaffer Ali Khan's letter referring to the paragraphs of Mr. Frere's decision, do not always correspond with the paragraphs of that officer's letter to Government; but the figures are sufficiently accurate to direct attention to the several portions of the letter in which the subjects adverted to are treated of.

(signed) *Falkland.*

3 June 1853.

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No. 21.

MINUTE by the Honourable Mr. *Blane*, dated the 21st June 1853.

21 June 1853. I CONCUR in the decision arrived at by the Right Honourable President, that no sufficient cause for any modification of Mr. Frere's award is shown in this appeal.

2. In the absence of the requisite proof to warrant any special disposition of the property, Mr. Frere's adjudication, in accordance with the Mahomedan law of inheritance, appears to me, on the whole, the most equitable course to be followed in administering to the estate, under Act XVIII., of 1848.

3. An award, to the effect of the concluding portion of para. 37 of the Right Honourable President's Minute, referring to Mr. Frere's Report, and to the representations of the several claimants thereon, as having been under the consideration of Government, should, I think, be issued to the agent, with authority to carry it into execution.

(signed) *D. A. Blane.*

21 June 1853.

From *H. Hebbert*, Esq., Acting Agent for the Right Honourable the Governor at Surat, to *A. Malet*, Esq., Chief Secretary to Government, Bombay.

Political Department, dated 8th March 1854.

Sir,

8 March 1854. I HAVE the honour to acknowledge your letter, No. 634, of the 6th ultimo, transmitting for my report thereon a communication dated the 19th December last, from Padshaw Begum to the Right Honourable the Governor in Council, as also for any remarks I may have to offer thereon a memorial, dated the 1st January last, from the same lady to the address of the Honourable the Court of Directors; in reply, I beg to submit the following:

2. With reference to Padshaw Begum's communication to the Right Honourable the Governor in Council; in this it is contended that Ameerool Nissa Begum was not the lawful wife of his Excellency the late Nawab, and that her child, Bukhtirool Nissa Begum, was illegitimate. It is asserted that Ameerool Nissa Begum's account of her own origin and first introduction into the Nawab's palace is false, being opposed to other evidence on the same subject; that her statements, the one taken before Mr. Elliot in 1842, and the other before Mr. Frere, 1852, are, at least in one respect, inconsistent; that the name entered in the marriage register produced as hers is one Ameerool Nissa Begum was never known by, and that the remark entered in that register, supposing it refers to her, of her having been emancipated by the Nawab prior to the marriage, is contradicted under his Excellency's own seal and signature, he having in two deeds produced by her represented her as the daughter of a Mahomedan, which being the fact, she never could have been a slave. I will notice each of these objections in order.

3. I have attentively gone through all the evidence that has been taken regarding Ameerool Nissa Begum's origin, &c., and find it to be most assuredly of a very unsatisfactory character; she represents herself to have been a Rajpoot girl, of Bhounuggur; to have been purchased from her parents by some person unknown, for a sum of money unknown, when 10 or 12 years of age, and two or three days afterwards to have been sold to the late Nawab for *Rs.* 200, and a pair of shawls. She did not, however, see her purchase-money paid, but only learnt afterwards from a third party what she had cost. This representation is, to some extent, corroborated by the widow of the late Nawab's brother, as also by an adopted child, and by a slave of the late Nawab's uncle, but neither did these persons see the purchase-money paid, whilst their statements are otherwise vague and open to criticism. On the other hand, the third party, a concubine of the late Nawab's, from whom

Ameerool

Ameerool Nissa Begum states she learnt she had been purchased, denies her having been so. Four other slaves (viz., three of the late Nawab's father, and one of his brother's, concur with her in representing Ameerool Nissa to have come to the Palace a fugitive from her own relations; but whether at that time she was a Hindoo or Mahomedan, they do not distinctly say. These four slaves, as also a fifth, were first examined by Mr. Elliot in 1842. The fifth was a slave of the late Nawab's uncle, who said he did not know whether Ameerool Nissa Begum had been purchased or received as a nuzzur. He has since died; the other four were re-examined by Mr. Frere in 1852, when three of them adhered to their former story; the fourth wavered therein, but substituted no other more credible for it. At this time Padshaw Begum also produced, as a fresh witness, one who had formerly been in the late Nawab's service, and whose testimony, so far as it can be depended on, goes to support that of the slaves just alluded to. 3 May 1856.

4. There can be no doubt Ameerool Nissa Begum's two statements vary in this, that in the first she asserted a written deed of emancipation had been passed to her at the time of her marriage, though she admitted her inability to produce it; and that in the second she denied any such document having been executed on that occasion, the same being, as she added, unnecessary, since she was not about to leave the palace. She is also inaccurate when in her first statement she asserts her marriage took place after her daughter Bukhtiarool Nissa's bismilla. In her memorial to the Honourable the Court of Directors, dated the 20th February 1844, para. 7, Bukhtiarool Nissa mentions she was born on the 2d January 1822, and that her bismalla was performed on the 19th April 1826; whereas from the register thereof she herself produces, it would seem Ameerool Nissa Begum was married on the 10th September 1825.

5. In this same marriage register the name of the person to whom the late Nawab was wedded, is entered as Wuzeerool Nissa. The evidence that Ameerool Nissa Begum was ever so called, is meagre to a degree. She alone asserts of her own knowledge that she was so. I observed that, with reference to this point in para. 6 of his letter, No. 139 of 1842, Mr. Elliot mentions the then native agent Ardaseer Dhunjeeshah had told him he was present at the wedding of this identical woman; but I do not know how Ardaseer could have said this, for it is not usual Mahomedan females of rank should make their appearance on such occasions, and even those who attended the ceremony as witnesses on the bride's behalf on this particular occasion, depose they never saw Ameerool Nissa. It is not probable that Ardaseer would be able to speak more positively to her identity than they. However, let all this be as it may, there can be no doubt his Excellency the late Nawab to the last acknowledged Ameerool Nissa Begum to be his wedded wife, whilst it is not known that he ever married any other than her by the name of Wurzeerool Nissa. There can be as little doubt it is the practice to give the bride a new name after the wedding, and that agreeably with this practice Ameerool Nissa Begum has been known by this name subsequent only to her asserted marriage, whatever she may have been called before.

6. Admitting the marriage register alluded to in the last para. refers to Ameerool Nissa Begum, then unquestionably the apparent contradiction pointed out by Padshaw Begum exists. In that register Ameerool Nissa is styled "Aleek-i-Nawab," *i.e.* emancipated of the Nawab, which clearly implies she had been a slave, whilst in two different deeds of gift, dated the 3d January 1828, and the 23d September 1832, under his Excellency's seal and signature, she is described as the Nawab's wife, and the daughter of Sheik Dost Mahomed, which as clearly implies she was of Mussulman descent, and as such she could not have been a slave. The Nawab's objects in marrying Ameerool Nissa Begum could only have been to give her the rank and rights of a wife, and to render the legitimacy of her previous offspring less open to suspicion. Supposing Ameerool Nissa Begum to have been a Mussulmanee, it is quite possible the words "Ateek-i-Nawab" may have been fictitiously inserted in the marriage register, and her father's name intentionally omitted, in order to secure the last object; but it does not neccssarily follow that Ameerool Nissa Begum was a Mussulmanee, because she is elsewhere styled by the Nawab the daughter of Sheik Dost Mahomed. It is not unusual for new converts to Mahomedanism

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to write themselves, "Bin Adam," or "Bin Abdoolla," &c., *i.e.* the son of Adam, or the son of Abdoolla, &c., and it is contended that his Excellency in this same spirit simply intended to attribute to his wife greater respectability of birth when he caused her to be denominated as above mentioned. It is equally possible with the other, that this argument may be based on truth, though I have been unsuccessful in finding another exactly parallel case. Emancipated slaves are usually written "Ateek-i," whilst concubines being slaves are written "Oom-i-Wullud," or "Moomlook," &c., according as they may or may not have borne children to their masters.

7. I have been particularly called upon to state when and where the deeds of gift just alluded to were produced, therefore would here mention that they were given in on behalf of Ameerool Nissa Begum, before Sir Robert Arbuthnot, on or about the 26th May 1845, since when they have been retained in the agent's office. The investigation made before Sir Robert having been carried on ex-parte, Padshah Begum and Meer Jaffer Ali's other opponents say they never saw these deeds till read and recorded before me in October last.

8. Amidst such a mass of loose and conflicting evidence as that I have above set forth, it is extremely difficult to decide who has spoken the truth; the bitter feuds that have so long existed in the palace, and their strong partisanship, render the word of the slaves scarce credible; while self-interest on the part of Ameerool Nissa Begum, and supposing Ameerool Nissa to have been a Mussulmannee, the desire on the part of the Nawab to place the legitimacy of his child by her beyond a doubt, in the same way lay the acts of one and the representation of the other open to great suspicion; also my impression is, that Ameerool Nissa Begum is the individual his Excellency the late Nawab married under the name of Wuzerool Nissa; but whether she was purchased by him or not, or whether she was originally a Hindoo or Mahomedan, I am not at all satisfied.

9. I gather from the close of your second para., this matter has been referred back to me, under an idea that the legitimacy or otherwise of Bukhtiarool Nissa Begum, Meer Jaffer Ali's late wife, admits of a doubt; but, tested by the strict rules of the Mahomedan law, this is not the case. They only are slaves who are captured in an infidel country in time of war, or who are the descendants of such captives. It is not pretended Ameerool Nissa Begum was either the one or the other of these; therefore she was not a legal slave, and her offspring prior to her marriage were spurious; so also, if she be of Mahomedan descent, her marriage with the Nawab would not legitimatise the children she had borne to him as his concubine. I say, tried by this strict test, Buktiarool Nissa Begum was unquestionably illegitimate; but at the same time, I would venture to submit for the consideration of the Right Honourable the Governor in Council, that any close inquiry on this head, any determination thus to judge the question, will strike at the very root of Mr. Frere's late decision. He has therein ruled that his own will was the only law his Excellency the late Nawab acknowledged, and that he having undeniably owned Ameerool Nissa Begum to be his wife and Buktiarool Nissa Begum to be his child, they should be so owned and admitted by others. I feel that it is for Government only to decide how far it will affirm this principle or otherwise, and therefore content myself with this allusion to it.

10. There is only one other remark it occurs to me to make on Padsha Begum's communication, and that is in connexion with her 6th para. I would observe that Amerool Nissa Begum's claim to share in the inheritance is of course independent of the question of her daughter Buktiarool Nissa's legitimacy; it rests only on the validity or otherwise of her own marriage with the Nawab. If her daughter be ruled illegitimate, but her own marriage valid, Ameerool Nissa Begum and Padshah Begum will be entitled to a fourth of the estate between them. If her daughter be held illegitimate, and Amerool Nissa Begum's marriage invalid also, then Padshah Begum will be entitled to one-fourth of the estate of her late husband to herself as she has represented.

11. I will now proceed to notice briefly the memorial addressed by Padsha Begum to the Honourable the Court of Directors. In the 25 first paras. of this

this, she combats the principle that the late Nawab's will should be considered the sole law that governed his actions, and repudiates the idea that his Excellency deemed Ameerool Nissa Begum his lawful wife, and Bukharool Nissa Begum his lawful daughter, because he cohabited with the first and owned the last to be his child by her, as I have remarked; however, in para. 10, I think these are questions exclusively for the decision of Government. The communication alluded to by Padsha Begum, in her 24th para., is, I presume, yours, No. 6593, of the 9th November 1850. In the paras. above cited, Padsha Begum also recapitulates much she has said in her communication to the Right Honourable the Governor in Council, but having reviewed all that once, I need not go over the same ground again. In the 26th and three following paras., Padsha Begum dwells on the delay that took place in attaching the late Nawab's property; in the first instance, on the restoration of some of the jewels after attachment, on the solemn affirmation of the parties in question as to their right to them; and on the non-attachment at all, till lately, of three large buildings belonging to his Excellency, I would beg to refer to my letter, as per margin, on these subjects. I am engaged in making the necessary inquiries to enable me to answer your last letter, No. 770, of 1854, having reference to them. Meanwhile, I would only here correct an error into which I inadvertently fell, when I said, in my former report, that Sir Robert did not appear to have mentioned to Government the fact of his having returned the jewellery he did. I now find he did mention it in his letter, No. 155, of the 22d June 1844, para. 6. I had not, when I before wrote, perused that letter. The remaining paras. of Padsha Begum's memorial call for no comment.

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No. 22, of the 18th January 1854.

17 February 1854.

12. The original communication of Padsha Begum to the Right Honourable the Governor in Council, with enclosures; as also that lady's memorial to the Honourable the Court of Directors, are herewith returned, as desired. I have ventured to correct, in red ink, a few obvious mistakes in the translations that accompanied your letter under acknowledgment.

I have, &c.

Surat.
Office of Agent for the
Right Honourable the Governor,
8 March 1854.

(signed) *H. Hebbert*,
Acting Agent.

From *H. L. Anderson*, Esq., Acting Secretary to Government, to *H. Hebbert*, Esq., Acting Agent for the Governor, Surat; dated 11 April 1854.

Sir,

I AM directed by the Right Honourable the Governor in Council to acknowledge the receipt of your letter, No. 81, dated the 8th ultimo, reporting on a communication dated the 19th December last, from Padshah Begum, widow of the late Nawab of Surat, to the address of this Government, and on the memorial from that lady, dated the 1st January last, to the address of the Honourable the Court of Directors.

11 April 1854.

2. In reply I am desired to inform you, that his Lordship in Council does not consider it desirable that any further investigation should be instituted regarding the legitimacy of Bukhtiar-ool-Nissa Begum, the daughter of the late Nawab of Surat.

3. It has been laid down by this Government as an inference from the 7th article of the treaty of 1800, that the Nawab was a sovereign in his own palace, and with respect to his own immediate domestic relations. It may be said with reference to the question, "To what municipal law was he subject," that he lived "*sine lege*," and that the only law within the circle of his authority was his own will. To ascertain what that will was with regard to the distribution of his property was the object of this Government. When ascertained, that will was to be studiously observed; when not ascertained, the law of the religion which the Nawab professed was adopted as the rule. In this course there was no conflict of laws; one rule was not arbitrarily applied, as the Padshah Begum would insi-

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nuate, to one part of the dispute, and a different rule to another part. The will of the Nawab when expressed, or when it could be reasonably inferred, took precedence; when it could not be ascertained, the Mahomedan law was introduced for the arrangement of the dispute.

4. The petition of the Padshah Begum asserts the illegitimacy of Bukhtiar-ool-Nissa Begum on the ground that her mother, Ameer-ool-Nissa Begum, was neither the wife nor the slave, but the concubine of the late Nawab. Throughout the investigation of the various claims to the disputed property, it has been assumed, and the fact appears to be almost conceded by Meer Jaffer Ali, that the marriage of Ameer-ool-Nissa Begum, and consequently the legitimacy of Bukhtiar-ool-Nissa Begum, could not be proved according to the strict provisions of the Mahomedan law; but it is one of the few facts clearly established in this difficult case, that the late Nawab, to the day of his death, always recognised Ameer-ool-Nissa Begum as his legal wife, and her daughter, Bukhtiar-ool-Nissa Begum, as his legitimate child. His "will" on this subject was unequivocally expressed by a series of acts, and operating within his palace as the supreme law, it legitimated his daughter. It is not therefore material to the question at issue relative to Meer Jafur Ali's claims, whether his mother-in-law's marriage received all the sanctions of Mahomedan law; those claims rest upon different grounds, and are sustained by distinct, but sufficient authority.

5. This was in effect the view taken by the late Agent, Mr. W. E. Frere, and adopted on appeal, after most mature deliberation, by this Government. The object of the Padshah Begum's present representation is to induce Government to recede from positions formerly assumed, and to subject the marriage of Ameer-ool-Nissa Begum to the tests of Mahomedan law. A compliance with this request would be to re-open for discussion questions which, on every consideration of justice and good policy, should be regarded as finally settled, and to abandon conclusions founded on one of the most laborious investigations on the records of Government.

6. The decision of this Government administered substantial justice between the antagonist parties, but if one claimant could be selected as having the most abundant reason for gratitude, that claimant would be the Padshah Begum. She was raised by that decision from a doubtful position, and a miserable stipend of rupees, thirty (30) per mensem, and established in the eminence of a widow of the Nawab, with all its honours and emoluments. It is clear, therefore, that Government can never be induced to doubt the propriety of its decision by a representation that the rights of the Padshah Begum have not been amply recognised.

7. The results to which a compliance with the Padshah Begum's requests would lead must not be overlooked. Were that lady's view to be adopted, and the issue of the Nawab, and Ameer-ool-Nissa Begum to be declared illegitimate, it is clear that the daughters of Meer Jafur Ali would be excluded from all share of the inheritance. Such a conclusion would constructively fix on the late Nawab the imputation of having practised a fraud upon two gentlemen of rank, and of having induced them, under false representations, to contract marriages with his illegitimate offspring.

8. That the various statements of Ameer-ool-Nissa Begum should exhibit discrepancies was to be expected, when the peculiar position of the lady was considered, and the probability that she had herself no very clear knowledge of her own origin. The inconsistencies which the conduct of the late Nawab would seem to have displayed, are compatible with the supposition that he wished previously to invest with a formal and ostensible respectability the individual whom it was his purpose to raise to his bed. But these questions do not require discussion; Government has recognised the legitimacy of Bukhtiar-ool-Nissa Begum on grounds which are sufficient, and which could be justified by precedents taken from the civil history of every country in the world.

9. Government, then, does not deem it just or expedient to depart from the spirit of its own decision, and to enter into a painful discussion which respect to the memory of an ancient ally would induce it to avoid, unless higher considerations imperatively demanded an opposite course.

10. I am

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10. I am to instruct you, therefore, to discontinue your inquiries relative to the legitimacy of Bukhtiar-ool-Nissa Begum, but to inform the Padshah Begum that her memorial to the Honourable the Court of Directors will be forwarded to its destination in regular course.

I have, &c.

(signed) *H. L. Anderson,*
Acting Secretary.

Bombay Castle.

Resolution by the Board, dated 30 March 1855.

30 March 1855.

Resolved,—The case relative to the succession to the general property of the late Nawab of Surat having been decided by Mr. W. E. Frere, and the decision of that officer having been confirmed by Government, the various claims advanced to particular portions of the property remained for adjudication. These claims have been investigated by Mr. Herbert, the Acting Agent for the Right Honourable the Governor, whose decisions, with the appeals subsequently preferred by the parties interested, are now before Government for final consideration.

2. The heirs general of the late Nawab, under the decision of Mr. Frere, are the following parties :—

I. Meer Jafir Ali Khan, on behalf of his daughters, the grandchildren of the late Nawab, entitled to one half of the property, or eight-sixteenths.
II. Padshah Begum, the wife of the late Nawab, entitled to one-sixteenth.
III. Ameer-ool-Nissa Begum, the wife of the late Nawab, entitled to one-sixteenth.
IV. Meer Moveenoodeen, the buckshie of Surat, great grandson of the late Nawab's great grand uncle, decended in the male line, entitled to three-sixteenths.
V. Meer Koomroodeen, in the same relation to the Nawab, as the bukshee, entitled to three-sixteenths.

3. These are the heirs general, but there are certain parties who claim certain villages, gardens, houses, and jewels, under specific grants from the late Nawab. These particular claims are opposed by certain of the heirs general; hence the present investigations, decisions, and appeals.

4. The claims have been divided into three classes by Mr. Hebbert.

I. The claims of Meer Jafur Ali Khan, on behalf of his daughters, in some of which Ameer-ool-Nissa Begum, his mother-in-law, and Meer Surfraz Ali, are jointly concerned.
II. The claims of Ameer-ool-Nissa Begum.
III. The claims of Meer Surfraz Ali, on behalf of his grandson.

They are opposed by the Padshah Begum, the buckshee, and the heirs of Meer Kumroodeen. It will save time if the claim of Meer Surfraz Ali, which is somewhat complicated, be at once explained. He is the father of Meer Jafur Ali, and of Meer Akhbur Ali, who married the two daughters of the late Nawab. Meer Akhbar Ali's wife, Nujubool Nissa Begum, died in March 1840, without issue; her husband, Meer Akhbur Ali, was her heir; on his death, his son by another wife, Meer Ibrahim Ali, became his heir, and that son's rights to certain specific grants made by the late Nawab, are now asserted by his grandfather Meer Surfraz Ali.

5. There are six claims in the first class, seven in the second class, and two in the third class, in all fifteen claims: of these seven have been decided by Mr. Hibbert in favour of the claimants, and appeals have been preferred by the opponents; seven have been rejected, and appeals have been preferred by the claimants. The remaining one claim has been decided partly in favour of the claimant (Meer Jafur Ali), and partly against him, and cross appeals have been respectively preferred; thus all the fifteen claims will demand the attention of Government.

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6. Before entering on the consideration of each claim, it will elucidate the views of Government, if the principle by which its subsequent decisions will be regulated is at once briefly explained. It has been laid down by Government, in the discussion relative to the late Nawab's property, that the rule by which the disposition of the property was to be adjudicated, was the Nawab's own will, and when that will could not be ascertained, then the Mahomedan law. It was held by Mr. Frere, and his view was concurred in by the Government, that with respect to the succession to his general property, the Nawab's will could not be ascertained; the Mahomedan law was therefore introduced for the decision of the question. This principle must be recognised in the settlement of the personal claims. If the Nawab's own will can be ascertained, that will must govern the arrangement, whether it be or be not in strict accordance with the conditions of the Mahomedan law.

First claim in first class.

7. The first claim is preferred by Meer Jafur Ali Khan to the Nujuna garden, in the village of Bhullan, near Surat, as having been presented in gift to his late wife. Bukhtyar-ool Nissa Begum, by her father the late Nawab. In support of his claim he produced a deed of gift, dated 3d June 1828, and urged that the produce of the garden had been enjoyed by his wife up to the day of her death.

8. Mr. Hebbert considered that the deed of gift was a genuine deed, and that the Nawab gave to it a legal validity. In both these conclusions the Right Honourable the Governor in Council concurs.

9. Mr. Hebbert has been at some pains to show that the Nawab, in this case, had endeavoured to fulfil the conditions of the Mahomedan law. The Padshah Begum and the other appellants have insisted that these conditions were not fulfilled. But the Right Honourable the Governor in Council does not consider this to be the point for discussion. Two facts established the "will of the Nawab," the genuineness of the deed of gift, and the enjoyment of the produce of the garden by the grantee. Against the first of these facts the appellants can only urge some technical objections founded on Mahomedan law; for instance, that the "tender, acceptance, and seizin," which the law prescribes, were not exactly performed. If it were necessary, it could be shown that the gift under discussion, being a gift from a father to a minor child, is one of the excepted cases in which the stringent provisions of the law are relaxed. But the Right Honourable the Governor in Council considers the objection to be useless as not "ad rem." It does not affect the question of the will of the Nawab."

Vide Macnaghten's Principles and Proceedings, p. 51.

10. To the other fact, that of the enjoyment of the produce by the grantee of the appellants object, that the accounts are not worthy of credit, and that they were rejected by Mr. Freer in the investigation of the claims of Meerza Mahomed Ali Beg. The cases are entirely distinct. The accounts were not rejected "in toto" on the investigation of Meerza Mahomed's claims. They were taken for what they were worth, but Meerza Mahomed had the principal management of the Nawab's accounts, and it was held that an entry in those accounts, in the absence of other evidence, was not sufficient proof for the establishment of a claim advanced by him. Moreover, it was shown that his claims did not tally with the accounts, and they were on all these grounds rejected, as in one instance especially, and, therefore, probably in all fraudulent. But the claim now under discussion is supported by other evidence than that of the accounts. There is a genuine deed of gift, and the accounts, through a series of years, corroborate and support the deed.

11. The Right Honourable the Governor in Council, therefore, has no hesitation in confirming Mr. Hebbert's decision upon this claim, and awards the Nugnna garden to Meer Jafur Ali on behalf of his daughters.

Second claim in the first class.

12. The second claim in the first class is preferred by Meer Jafur Ali, Ameer-ool Nisss Begum, and Meer Surfraz Alli, jointly. It relates to the village of Ootyadra, in the Broach Collectorate. They contend it was bought with the money of the Nawab's wife, Amerrool Nessa Begum, and of his two daughters, Bukhtyarool Nissa Beegum, and Nujubool Nissa Beegum.

13. In support of their claim they produced a deed of sale, dated 22d October 1831, in which it is stated that the village is purchased for the above-named ladies

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ladies with their own money, at a cost of 61,000 rupees. To this deed of sale the seals of the Buckshie and of the father of Meer Kumroodeen, two of the present opponents, are attached. It is stated that up to 1834-5 the produce was enjoyed by the ladies, but that afterwards it was generally received by the Nawab.

14. Mr. Hebbert having rejected the claim on the following grounds: That the village was purchased with the Nawab's money; that it was not given by the Nawab to the ladies, though it was probably his intention at a future time to give it; that if given, it should, as a formal gift, have been divided into three parts, and each part have been respectively assigned; that the enjoyment of the produce during certain years would only be regarded as a gift of so much money; that in other years the accounts are not above suspicion; that the principal parole testimony is that of a strong partisan; that the Nawab exercised all the rights of an owner, and, finally, left the village in mortgage.

Vide Macnaghton's Principles and Precedents, p. 50. Principle, No. 7.

15. The Right Honourable the Governor in Council, after full consideration of Mr. Hebbert's arguments, is inclined to take an opposite view of the merits of the claim. It is stated in the deed that the village was bought "with the "money of the ladies." Mr. Hebbert argues that this statement is false, because it is clearly proved that the money was the Nawab's, having been borrowed by him for the occasion. The two facts are easily reconciled, and the transaction is perfectly intelligible. The Nawab wished to give a village to his wife and daughters. As the village was not in his own possession, the simplest and most direct plan was to give them the purchase-money, and allow the village to be bought for them. They therefore became the proprietors of the village, and no deed of gift was necessary from the Nawab. To the deed of sale the Bukshie and the father of Meer Koomrooden were attesting witnesses. Mr. Hebbert considers that by their attestation they merely bore evidence to the fact of the purchase; but, in the opinion of the Right Honourable the Governor in Council, it cannot be doubted that they did more than this; they bore evidence to the fact "by or on behalf of whom the purchase was made." This conclusion is supported by the circumstance that the Bukshie admitted before the late Mr. Andrews, that he had no claim to the village of Ootradra. The Bukshie now says, that he has no recollection of the circumstances; but such an assertion cannot prevail against the record made at the time by the late Agent. The Right Honourable the Governor in Council does not regard the Bukshie's admission as of great value; but it may be added, *quantum valeat*, to the proof which is deducible from the fact that he attested the deed of sale.

16. But Mr. Hebbert considers that the Nawab merely purchased the village in the name of his wife and daughters. "The practice," he states, "of purchasing "property in the name of another is by no means uncommon; but he never "heard of an instance in which such a circumstance vitiated the purchaser's "right in favour of that other." It may be conceded that if a party can prove that he is the real purchaser, he will prevail against the nominal purchaser; but, in the present case, the question is, who was the real purchaser? Why were the words "with their own money" introduced into the deed of sale? Clearly to show that the ladies were to be regarded as the real purchasers and future proprietors. No other reason can by possibility be suggested.

17. The Right Honourable the Governor in Council then considers it to be established that the ladies should be regarded as the real purchasers of the village. This important conclusion will dispose of many difficulties. All the formal procedure which the Mahomedan law demands will be rendered unnecessary, because the claimant's right does not accrue as grantees of the Nawab, for he was never seised of the village, but as proprietors who acquired their title by purchase. This point has been overlooked by Mr. Hebbert, and his remarks on the non-fulfilment of the conditions of the law are therefore not germane to the matter really in dispute.

18. There can be little doubt, even from Mr. Hebbert's statement, that the ladies enjoyed the produce up to 1834-35. After that year it would appear to have been generally received by the Nawab. The question then arises, does this fact, and the fact that the Nawab left the village in mortgage, justify the rejection of the present claim? Before so harsh a conclusion be adopted, the

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relation of the Nawab to the purchasers should be considered. They were his nearest relatives, living in his own house, in which his own will was law. If the question was one relative to the rights of any member of his household not closely allied to him, it would be sufficient to determine that the Nawab's act, however arbitrary, must be regarded as law; but it would be unjust to regard so stringently the Nawab's acts with reference to the rights of his own relatives. To take an analogous case of frequent occurrence: under the Hindoo law, a wife's jewels are his own property; but a jagheerdar, when pressed by necessity, makes no difficulty about pledging them. He has not an exact right to do so; but nevertheless his proceedings are supposed to be acquiesced in by the wife. So, in the case before Government, the Nawab, in strict right, could not pledge the village of Ootradra, because it was the property of his wife and daughter; but the proceeding was perfectly natural, and there could be no injustice, so long as he and his family were only concerned. But when a third party (other than the mortgagee) comes forward, and urges that the act of the Nawab has abrogated the right of his wife and daughter, it is at once seen that a grievous injustice would be perpetrated by acquiescing in such a conclusion.

19. The Right Honourable Governor in Council therefore considers that "the will of the Nawab" is amply demonstrated in this case. He is of opinion that the Nawab intended the ladies to be proprietors of the village; that they were the proprietors; and that the subsequent acts of the Nawab under the consideration of the new relation of the parties, should not be regarded as prejudicial to the rights of the ladies. He therefore modifies the decision of Mr. Hebbert, on this part of the general case, and awards the villages of Ootradra to the claimants.

Third claim in first class.

20. The third claim is jointly preferred by Meer Jafur Ali, Ameerool Nissa Begum, and Meer Surfraz Ali. It relates to the Husmuth Garden, in the village of Uthvea, which they contend was presented in gift by the late Nawab to his wife and two daughters.

21. The claimants are unable to produce any deed of gift in their favour, and rely on the fact that the produce of the garden was never credited in the Nawab's accounts, and on the evidence of some dependents, who state that they heard the Nawab say that he had given the garden to his wife and daughters.

22. Mr. Hebbert has rejected the claim, on the ground that tender, acceptance, and seisin were not proved. Against this decision the claimants have protested, urging that the provisions of the Mahommedan law are not applicable to the case. The Right Honourable the Governor in Council, without agreeing in Mr. Hebbert's premises, concurs in his conclusion. He considers that the will of the Nawab has not been sufficiently indicated in this instance. There being no deed of gift, the proprietory right remained with the Nawab; the enjoyment of the produce by the ladies only showed an usufructuary interest, which might in any year have ceased, had the Nawab so pleased. That a deed of gift was necessary, is shown by the fact that in the instance of the Nuguna Garden (Claim I.), and in other instances, to be hereafter considered, deeds of gift were executed. The claimants contend in their appeal that their beneficial interest gave them a title against all the world, except the Nawaub himself. To this the answer is obvious, that the exception of "the Nawab himself" must include the Nawab's representatives, viz., his heirs general. For the reasons thus stated, the Right Honourable the Governor in Council confirms Mr. Hebbert's decision.

Note.—Was considered necessary by the Nawab. A gift may be verbal, according to the Mahomedan laws.

Fourth claim in first class.

23. The fourth claim is preferred by Meer Jafur Ali and Meer Surfraz Ali. It relates to a large building in Surat, termed the Durja Mehel, now let to the British Government for an English school. Ameerool Nissa Begum also advanced a claim to the building, but she subsequently withdrew it.

24. The merits of the case are precisely similar to those of the Husmuth Garden. There was no deed of gift, and the oral testimony is contradictory. The arguments advanced on both sides suggest the same considerations as are set forth in the observations of the Right Honourable the Governor in Council on the claim to the Husmuth Garden. It is unnecessary, therefore, to state them again. The Right Honourable the Governor in Council considers that the will of

of the Nawaub has not been sufficiently indicated, and he therefore confirms Mr. Hebbert's decision. 3 May 1856.

25. The fifth claim is preferred by Meer Jafar Ali, as heir to his late wife, and as guardian to his daughter. It relates to the Dilfiza Garden, situated within the walls of the city of Surat. He contends that it was granted to his late wife and daughter by the late Nawab shortly before his death. The fifth claim in first class.

26. In support of the claim, a deed of gift was produced, dated June 11th, 1842, and bearing, among others, the seal of the Bukshie. Mr. Hebbert considered that the Nawab executed the deed of gift, but that he never transferred the property out of his own possession during the short remainder of his life. On this ground, and on the ground that the garden was not divided between the grantees, he rejected the claim. *Note.*—The Nawab died on the 8th August 1842.

27. In this reasoning the Right Honourable the Governor in Council does not concur. He can only repeat that so long as the will of the Nawab can be ascertained, it does not matter whether all the technicalities of the Mahomedan law have been strictly observed. It is allowed that the Nawab executed a deed of gift, in which he stated that he dispossessed himself of the garden which he had recently purchased, and in which he stated that Meerza Mahomed Ali Beg received legal possession on behalf of one grantee and on behalf of the legal guardian of the other grantee. The Right Honourable the Governor in Council is clearly of opinion that this deed of gift, to which the seal of the Bukshie is affixed, amply indicates the will of the Nawab, and he therefore modifies this part of Mr. Hebbert's decision, and awards the Delfiza Garden to the claimant.

28. The sixth claim is preferred by Meer Jafur Ali, as the heir of his infant son, Meer Ameeroodeen, deceased. It relates to the state jewels and insignia, valued at *Rs.* 14,074. 8. and to certain miscellaneous jewellery, &c., of the estimated value of 4,282 rupees. Sixth claim in first class.

29. The claim to the State jewels and insignia is based upon the fact that on the 4th of February 1841 the Nawab nominated the child, MeerAmeeroodeen, as his jac-nushun, or successor, seating him on the musnud with himself, and placing on him the state jewels. After the ceremony was concluded, the Nawab sent the jewels with the zenana, either to Ameerool Nissa Begum, his wife, who had always had charge of them, or to Buktyarool Nissa Begum, his daughter. On the next day he wrote to Meer Surfraz Ali, the father of Meer Jafur Ali, and told him that he had placed the child on the musnud, had, according to the custom of his ancestors, given him the jewels, and had nominated him his successor.

30. The question then arises, whether by this ceremony, the Nawab presented the jewels to the child in free gift, or only as his successor? The Right Honourable the Governor in Council is clearly of opinion that Mr. Hebbert has taken a correct view, when he states that the presentation of the jewels was merely emblematical of the recognition as successor. He considers that the language of the letter to Meer Surfraz Ali points to the same conclusion, as evinced by the expression "according to the custom of his ancestors." The child died on the 10th of June 1841, during the lifetime of the Nawab, being about two-and-a-half years of age. The Right Honourable the Governor in Council does not consider that the jewels were bestowed in free gift on the child, but were contingent on the succession, which never occurred; he does not think that this conclusion has been invalidated by any arguments advanced by the appellant, Meer Jafur, and he accordingly confirms Mr. Hebbert's decision on this part of the claim.

31. Next, with reference to the miscellaneous jewels. These have all been awarded to Meer Jafur Ali by Mr. Hebbert, with the exception of two rings, a goolabdanee, and a small one of the estimated value of *Rs.* 566. 8. The Right Hon. the Governor in Council concurs with Mr. Hebbert in considering that adequate proof has not been afforded with reference to the excepted articles, and he also fully agrees with the acting agent in holding that no reasonable doubt can be entertained as to the remaining jewellery. A part was given by Ameerool Nissa Begum, by Meerza Ali Beg and by Buktyarool Nissa Begum to the child, and a part by the Nawab; there is no exact proof on the latter point to the extent of formal delivery, but the size of the ornaments shows that they were intended for a child; and therefore the Right Honourable the Governor in

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Council has no hesitation in deciding in favour of the claim. The appeal of the opponents is confined to the assertion that the technicalities of the Mahomedan law have not been observed; but this plea, as the Right Honourable the Governor in Council has before stated, is of no value, when the will of the Nawab can be ascertained; the decision of Mr. Hebbert is therefore confirmed.

32. The Right Honourable the Governor in Council has now to consider the claims in the second class, which comprises the sole claims, seven in number, of Ameerod Nissa Begum, the wife of the late Nawab.

First claim in second class.

33. The first claim relates to two pieces of land, situated in the village of Dubholee. It does not demand the lengthened consideration of Government. It is supported by a deed of gift of unquestionable genuineness, dated 3 June 1828 (the same day as that in which the Nugura Garden was given to Meer Jafar's wife (*vide* first claim in first class), and by adequate proof that the produce was subsequently enjoyed by the grantee. On the other side, it is urged, that the conditions of the Mahomedan laws have not been fulfilled; a plea, which does not demand further observation, and that the Nawab, in 1832 and 1833, when forwarding a list of his ancestral possessions, the produce of which was to be admitted into Surat free of duty, included the lands now in dispute in the list. The latter fact is of very little weight, as the Nawab would naturally draw no distinction between his own possessions and those which he had given to his own wife. The decision of Mr. Hebbert is therefore confirmed.

Second claim in second class.

34. The second claim relates to the Afzool Garden, in the village of Murzoun, close to Surat. It is supported by a deed of gift, dated 6th September 1830, to which, among others, the seals of the Bukshie and Meer Kumroodeen are attached. The same evidence is given as to the enjoyment of the produce; the opposition and appeals rest on the same grounds as in the preceding case. The Right Honourable the Governor in Council therefore does not deem it necessary to dwell at any length on the merits of the claim, but confirms Mr. Hebbert's decision in favour of the claimant, considering that the will of the Nawab has been amply indicated.

Third claim in second class.

35. The third claim relates to a small piece of land adjoining the Afzool Garden; it is let out to Dhobees, having several wells in it; the claimant states her husband in 1838 bought the piece of land for her at a public auction; she produces three witnesses in support of her statement, and an extract from the Nawab's accounts, to show that she enjoyed the produce.

36. Mr. Hebbert rejected the claim principally on the ground that there was no tender, acceptance, and seisin. The Right Honourable the Governor in Council does not consider that the will of the Nawab has been clearly shown; he bought the land in his own name; he appears in one year to have sent the produce into the Muhel, but to which of the occupants is not stated. He lived for four years after the date of purchase, but he never appears to have formally given the land to Amerool Nissa Begum. The Right Honourable the Governor in Council does not consider that any circumstances are stated in the appeal which strengthen the claimant's case, and he therefore concurs with Mr. Hebbert in rejecting the claim.

Fourth claim in second class.

37. The fourth claim is to a house, or rather building site, for the house has fallen down, in the Begum poora, in the city of Surat. In support of the claim, a deed of purchase, dated 26th June 1834, is produced, in which it is stated that the house was purchased for 70 rupees of Amerool Nizza Begum's own money. The acting agent has held that sufficient proof has been adduced in support of the claim, and in this view the Right Honourable the Governor in Council concurs. The only appellant is the Bukshie, and his opposition is founded on the fact, that Amerool Nissa Begum did not include the house in the list of her property forwarded to Sir Robert Arbuthnot in 1844. The Right Honourable the Governor in Council considers this fact to be of very little weight in comparison with the positive evidence in the claimant's favour, and he therefore confirms Mr. Hebbert's decision.

Fifth claim in second class.

38. The fifth claim relates to the Dadh Illahi Gardens, large and small. The evidence produced is similar to that exhibited in several other claims; a deed of gift, dated 22d September 1832, bearing, amongst others, the seal of

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of the Bukshee, and of two of the Princes of Delhi; the real testimony of these witnesses, and some accounts; Mr. Hebbert has held the evidence in support of the claim to be sufficient, and the Right Honourable the Governor in Council entirely concurs in his opinion. The Appellants refer, as usual, to the Mahomedan law, to the fact that the Nawab in 1835 and 1838 included the gardens in the list of possessions which he forwarded to the agent, and to the omission of the gardens in the statement given to Sir R. Arbuthnot in 1844. The first of these objections requires no remark; the second is utterly futile, and has been disposed of in the 33d para. of this Resolution; the third would be a powerful subsidiary argument; but standing by itself, it cannot prevail against the convincing evidences adduced in favour of the claim. The Right Honourable the Governor in Council, therefore, determines to confirm Mr. Hebberd's decision.

Sixth claim in second class.

39. The sixth claim relates to the Kaden Garden just outside the city of Surat. Amerool Nissa Begum states that it was given to her in 1834, by the Nawab, on the occasion of the marriage of their daughters. In support of this statement, she produces three witnesses, and some accounts. Mr. Hebbert was of opinion that the provisions of the Mahomedan law were not complied with. The Right Honourable the Governor in Council considers that the will of the Nawab was not sufficiently manifested. There was no deed of gift, and the first asserted payment of the produce into the Mehel was not until five years after the asserted gift. Whatever it may have been the intention of the Nawab to do at some future time, the Right Honourable the Governor in Council is clearly of opinion that he did not part with the village during his life, and he does not think that the Appellant has at all succeeded in opposing this conclusion. He therefore confirms Mr. Hebbert's decision.

The seventh claim in second class.

40. The last claim advanced by Amerool Nissa Begum relates to a small piece of land called the "Koodewalle Zumeen," situated at the back of the Ama Mahal. It produces a few flowers and vegetables. She states that it was given to her by the late Nawab; but the evidence is altogether weak and unsatisfactory. There is no deed of gift, and of the two witnesses, the evidence of one, the Karbharee Meerza Mahomed Ali Beg, is pronounced by Mr. Hebbert to be vague, and "amounting to nothing;" the other is that of the Mullee, who merely states that the flowers and vegetables were, by the Nawab's order, given to Amooral Nissa Begum, who sold them. The Right Honourable the Governor in Council does not consider that the will of the Nawab to constitute Amooral Nissa Begum the owner of this piece of land in the immediate vicinity of the Ama Mehel, is clearly shown. That he may have directed the produce to be given to her is very probable; but the land was not, in the opinion of the Right Honourable the Governor in Council, ever transferred to the ownership of the claimant. The Right Honourable the Governor in Council confirms Mr. Hebbert's decision, and rejects the claim.

41. The Right Honourable the Governor in Council now proceeds to consider the decisions passed on the claims in the third class, those preferred by Meer Surfraz Ali on the behalf of his grandson, Meer Ibrahim Ali.

First claim in third class, and second claim in third class.

42. The two claims in the third class are connected with a question by which both must be decided. The first claim relates to the Phool Garden, in the village of Kulungaon, close to Surat. The claimant states that the garden was given to Nujnbode Nissa Begum by her father, the late Nawab. In proof of this statement, a deed of gift is produced, dated 3d June 1828, bearing the seals of the Buckshie and Meer Kunnroodeen, and of other gentlemen of rank. It should be observed that the gift was made on the same day that the Naguna Garden was given to Bukhtyavool Nissa Begum, and the land in Dubhoolie to Amirool Nissa Begum. The case rests on precisely the same grounds as these Grants, and the same kind of evidence is adduced to prove the enjoyment. The objections urged on the trial and in the appeals are those which have been disposed of in the consideration of other claims. It is, however, urged by the Padshah Begum, that the seal of Meer Kumroodeen bears date 1244 of the Hejree, while the deed bears date 1243 of the Hejree. The Right Honourable the Governor in Council regards this objection as utterly futile. If the Nawab, or any one else forged the seals, care would have been taken that there was no discrepency in the dates. The obvious conclusion is, that Meer Koomroodeen

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did not affix his seal to the deed until some time after its execution. So far, then, as the facts of the gift, and the enjoyment of the gift, are in question, the Right Honourable the Governor in Council concurs with Mr. Hebbert in considering the claim to be fully proved.

43. But a new question arises from the fact that Nujeebool Nissa Begum died in 1840, that is during her father's lifetime. She died childless, and therefore her husband, Meer Akhbar Ali, would only be entitled to one-half of her property; the other half would be the right of her father the Nawab. This point will be considered by the Right Honourable the Governor in Council in connection with the second claim in this class.

44. The second claim relates to some jewelry of the estimated value of *Rs.* 62,183. 12. There are also some clothes, &c., which have not been valued, as objections were raised to the inspection of them by strangers; but their value is not great. The jewels were partly given to Nujeebool Nissa Begum by the Nawab at the time of her marriage, as dehej, and partly by her husband and his friends.

45. It is contended, on the other hand, by the Padshah Begum, and the other opponents, that on the death of Nujeeb-ool-Nissa Begum, without children, the dehej reverted to the Nawab, her father, who was also entitled to one-half of the remaining property of his daughter.

46. It is urged by the claimant that the property remained in the possession of Meer Akhbar Ali, the husband of the lady; that it is not the custom in the Nawab's family to take back dehej, or to demand a portion of a daughter's property on her death, and that in this instance even, if such a claim were advanced, it could not be sustained, because Nujeeb-ool-Nissa Begum, before her death, gave all property in free gift to her husband.

47. It will save time if the Right Honourable the Governor in Council at once states, that, however probable the last assertion may be, he does not think it has been clearly established by satisfactory proof. Two questions will then remain for consideration: 1st. Did the Nawab resume the dehej, and other property? 2d. If he did not, are his heirs still entitled by the custom of the family, and by the law, to claim the property?

48. It would appear that, on Nujeeb-ool-Nissa Begum's death, during the absence of her husband at Baroda, the jewels remained in the custody of her foster mother, Boown Ajut Bahar, a concubine of the Nawab; that about a year afterwards this foster mother being dangerously sick, sent a message to the Nawab, asking him to arrange for the security of the jewels. The Nawab consequently sent some persons, who marked off on the list of dehej the articles that were forthcoming, and made a list of the other property. The whole was then locked up, and the keys of the boxes and of the rooms were given to Boown Ajut Bahar. A small seal of the Nawab, which the Kharbaree wore on his finger, was then affixed to the door of the room in which the more valuable part of the property was placed.

49. The question then now is, whether the Nawab by this act resumed the jewels, or whether he merely secured them for his son-in-law. Mr. Hebbert adopts the latter conclusion, and in this view the Right Honourable the Governor in Council concurs. A letter has been exhibited, addressed by the Nawab to Meer Akhbar Ali, his son-in-law, which would clearly establish this point in favour of the claimant, which is objected to by the other side as a forgery. The Right Honourable the Governor in Council, without discussing that question, considers the facts that the jewels were left in the apartments in which Meer Akhbar Ali and his wife lived, and that the keys were left with the foster-mother of Noojebool Nissa Begum, forbid the conclusion that the Nawab intended to resume the property. Had he so intended, he would most probably, as Mr. Hebbert remarks, have sent for the property, and have distributed it among the surviving ladies of his family. The only fact which favours the opposite argument is, that Meer Akhbar Ali should have allowed the jewels to remain in the rooms in which they had been locked up; but the Right Honourable the Governor in Council considers that this circumstance is sufficiently explained by the fact that he had at that time no other wife to make use of the ornaments. The Right Honourable

Honourable the Governor in Council, then, is of opinion that the Nawab did not resume the property left by his daughter.

50. The question then remains, whether the Nawab's heirs general are entitled by law or custom to the dehej, and to one-half of the other property, as his representatives.

By the law the claim would be justified; but in all disputes of this nature in families of high rank it is always the rule to ascertain the custom of the family. It is perfectly intelligible that a right may exist which it may not be consistent with the dignity of the family to assert, and thus a custom springs up which becomes a law in matters in which the family alone are concerned. The Right Honourable the Governor in Council agrees with Mr. Hebbert in considering that it has been established by the evidence of men of high rank, and among others of the Bukshee himself, that it is not the custom in the Nawab, or in any other high families, to demand the restoration of the dehej, or to prefer any claim to any part of the property of a daughter who has been given away in marriage. The Right Honourable the Governor in Council considers this evidence conclusive in favour of the claimant, and he therefore awards the jewels, and other property included in the claim, to Meer Surfraz Ali, as the guardian of his grandson, the heir of Meer of Akhbar Ali.

51. The decision, then, on this point must also govern the dispute relative to the Phool Garden, the subject of the first claim in this class, which is accordingly awarded to the claimant.

52. It is to be understood that, in the decision of all their claims, the arrears which may be in deposit since the attachment are to be paid to the party in whose favour the award is pronounced—to the claimant, if the decision is in his favour; to the heirs general, when the claim is rejected.

30 March 1855. (signed) *Elphinstone.*

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

NAWÁB OF SURAT TREATY BILL

DOCUMENTS PRODUCED BY MR. ROLT ON BEHALF OF THE PETITIONERS.

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